Office Supreme Court U.S.
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JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 5, Original.

THE STATE OF MISSOURI, PLAINTIFF,

vs.

THE STATE OF NEBRASKA.

MOTION FOR LEAVE TO FILE PETITION; PETITION AND EXHIBITS THERETO.

EDWARD C. CROW,
Attorney General of Missouri.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C. 1-17-1900

IN THE

Supreme Court of the United States

OCTOBER TERM, 1899.

STATE OF MISSOURI, PLAINTIFF,

vs.

THE STATE OF NEBRASKA, DEFENDANT.

Now comes the plaintiff, by Edward C. Crow, attorney general, and moves the court for leave to file the accompanying petition.

EDWARD C. CROW,
Attorney General.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

STATE OF MISSOURI, *Plaintiff*,
vs.
STATE OF NEBRASKA, *Defendant*.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Plaintiff states that it is one of the Union of States constituting and forming the United States of America; that by act of Congress approved March 6, 1820, it was admitted into the Union of States upon an equal footing with the original States in all respects whatsoever; that it is provided by

the act of admission that said State shall consist of all territory included within the following boundaries, to wit: "Beginning in the middle of the Mississippi river, on the "parallel of thirty-six degrees north latitude; thence west, "along that parallel of latitude to the San Francois river; "thence up and following the course of that river, in the "middle of the main channel thereof, to the parallel of lati- "tude thirty-six degrees and thirty minutes; thence west "along the same to a point where the said parallel is inter- "sected by a meridian line passing through the middle of "the mouth of the Kansas river, where the same empties "into the Missouri river; thence from the point aforesaid, "north, along the said meridian line, to the intersection of "the parallel of latitude which passes through the rapids "of the River Des Moines, making the said line to corre- "spond with the Indian boundary line; thence east from "the point of intersection last aforesaid, along the said par- "allel of latitude, to the middle of the channel of the main "fork of the said River Des Moines; thence down and along "the middle of the main channel of the said River Des "Moines, to the mouth of the same, where it empties into "Mississippi river; thence due east to the middle of the "main channel of the Mississippi river; thence down and "following the course of the Mississippi river, in the mid- "dle of the main channel thereof, to the place of begin- "ning: *Provided*, That said State shall ratify the bounda- "ries aforesaid: (*a*) *And provided also*, That the said State "shall have concurrent jurisdiction on the River Missis- "sippi, and every other river bordering on the said State, "so far as the said river shall form a common boundary to "the said State and any other State or States, now or here- "after to be formed and bounded by the same—such rivers "to be common to both; and that the River Mississippi, and "the navigable rivers and waters leading to the same, shall "be common highways, and forever free, as well to the in- "habitants of the said State as to other citizens of the United

"States, without any tax, duty, impost or toll therefor im-
"posed by the said State."

Plaintiff further states that by an act of the Senate and House of Representatives of the United States of America in Congress assembled the boundary line of said State was to a certain extent changed in this, to wit, that all that part of a strip of territory lying between the Missouri river and west of a meridian line passing through the middle of the mouth of the Kansas river where the same empties into the Missouri river, thence north along said meridian line to the intersection of the parallel of latitude which passes through the rapids of the River Des Moines, as provided for by said act as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That when the Indian title to all the lands lying between the State of Missouri and the Missouri river shall be extinguished, the jurisdiction over said lands shall be hereby ceded to the State of Missouri, and the western boundary of said State shall be then extended to the Missouri river, reserving to the United States the original right of soil in said lands and of disposing of the same: *Provided*, That this act shall not take effect until the President shall by proclamation, declare that the Indian title to said lands has been extinguished; nor shall it take effect until the State of Missouri shall have assented to the provisions of this act."

The plaintiff further states that after the enactment of the aforementioned act by Congress, the President of the United States, by proclamation, declared that the Indian title of said lands had been extinguished, and the State of Missouri, after the passage thereof, duly and legally assented to the provisions of said act.

The plaintiff states that in February, 1831, the State of Missouri, by act of its legislature, petitioned the Congress of the United States to alter and extend its boundary line so as to include all that tract of land lying on the north side

of the Missouri river and west of the then boundary line, so that the same shall be bounded on the south by the middle of the main channel of the Missouri river and on the north by the then present northern boundary line when the same is continued in a right line west to the middle of the main channel of the Missouri river; the above tract of land having been previously held by the Kansas, Iowas, Sac, Foxes, and other Indian tribes, but which had been at the time of the request of the plaintiff herein to the Congress of the United States for annexation duly and legally ceded by said Indian tribes to the Government of the United States by treaty known as the treaty of Prairie du Chien.

The object of this plaintiff in its memorial to the Congress of the United States for the addition of said territory, which was a strip of land about one hundred miles long, running north from the mouth of the Kansas river to the north line of the State and east of the main channel of the Missouri river, was that as the Missouri was the only great highway of that region of the State and could not be reached by a country inhabited by Indians, and being without roads, a cession to this plaintiff was necessary and proper. By the act of June 7, 1836, the request of the State of Missouri was granted and it was ceded all jurisdiction over the lands lying between its then western line and the Missouri river, making said river its western boundary.

Plaintiff further states that the defendant, The State of Nebraska, is a member of the Union of States constituting and forming the United States of America; that it was admitted into the Union by an act of the Senate and House of Representatives of the United States of America in Congress assembled, and approved on the 19th day of April, 1864; that said act of admission into the Union provides the following boundaries for said State, to wit: "Commencing at a point formed by the intersection of the western boundary of the State of Missouri with the fortieth degree north latitude; extending thence due west along said fortieth degree north

latitude to a point formed by its intersection with the 25th degree of longitude west from Washington; thence north along said twenty-fifth degree of longitude to a point formed by its intersection with the forty-first of north latitude; thence west along said forty-first degree of north latitude to a point formed by its intersection with the 27th degree of longitude west from Washington; thence north along said 27th degree of west longitude to a point formed by its intersection with the forty-third north latitude; thence east along said forty-third degree north latitude to the Reya Paha river; thence down the middle of the channel of said river, with its meanderings to its junction with the Niobrara river; thence down the middle of the channel of said river following the meanderings thereof, to its junction with the Missouri; thence down the middle of the channel of said Missouri river, and following the meanderings thereof to the place of beginning."

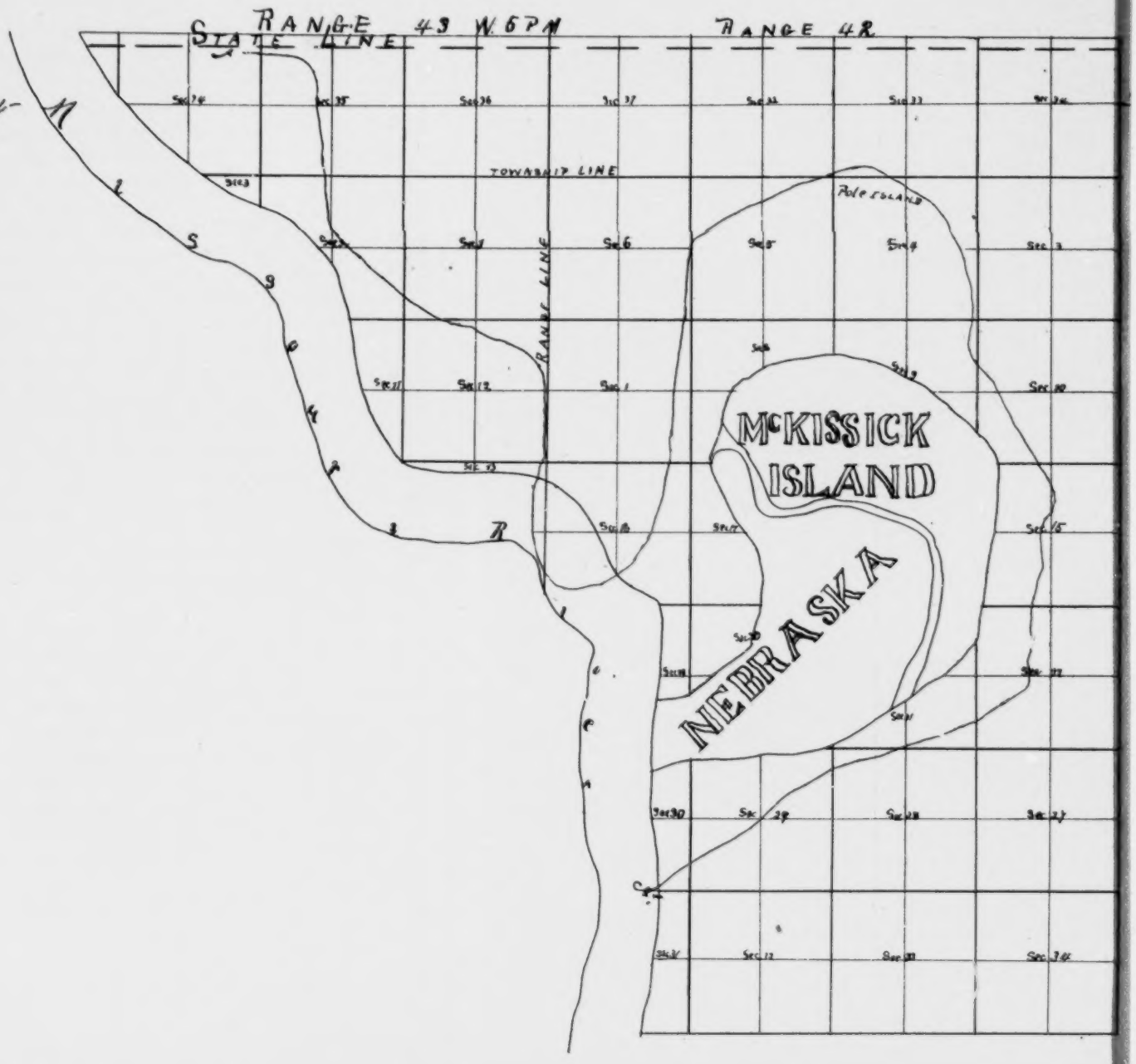
Plaintiff further states that by the act of Congress admitting the State of Nebraska into the Union of States and the act of Congress approved June 7, 1836, extending the jurisdiction and territory of the State of Missouri, the boundary line between said States, the plaintiff and defendant, is the middle of the channel of the Missouri river, following the meanderings thereof.

Plaintiff further states that at the time of admission of plaintiff and defendant into the Union the land bordering on each side of the Missouri river was wild, swampy, uninhabited, and uncultivated; that it contained a large number of sloughs, marshes, and was at nearly all times of the year covered with water, which rendered it totally useless for agricultural and other useful purposes. At said time and for a long time thereafter the channel of said river was continually changing from place to place, caused at times by the force of accretions and deposits along the banks thereof and by a constant carrying away of the opposite bank or by a sudden change during times of high water,

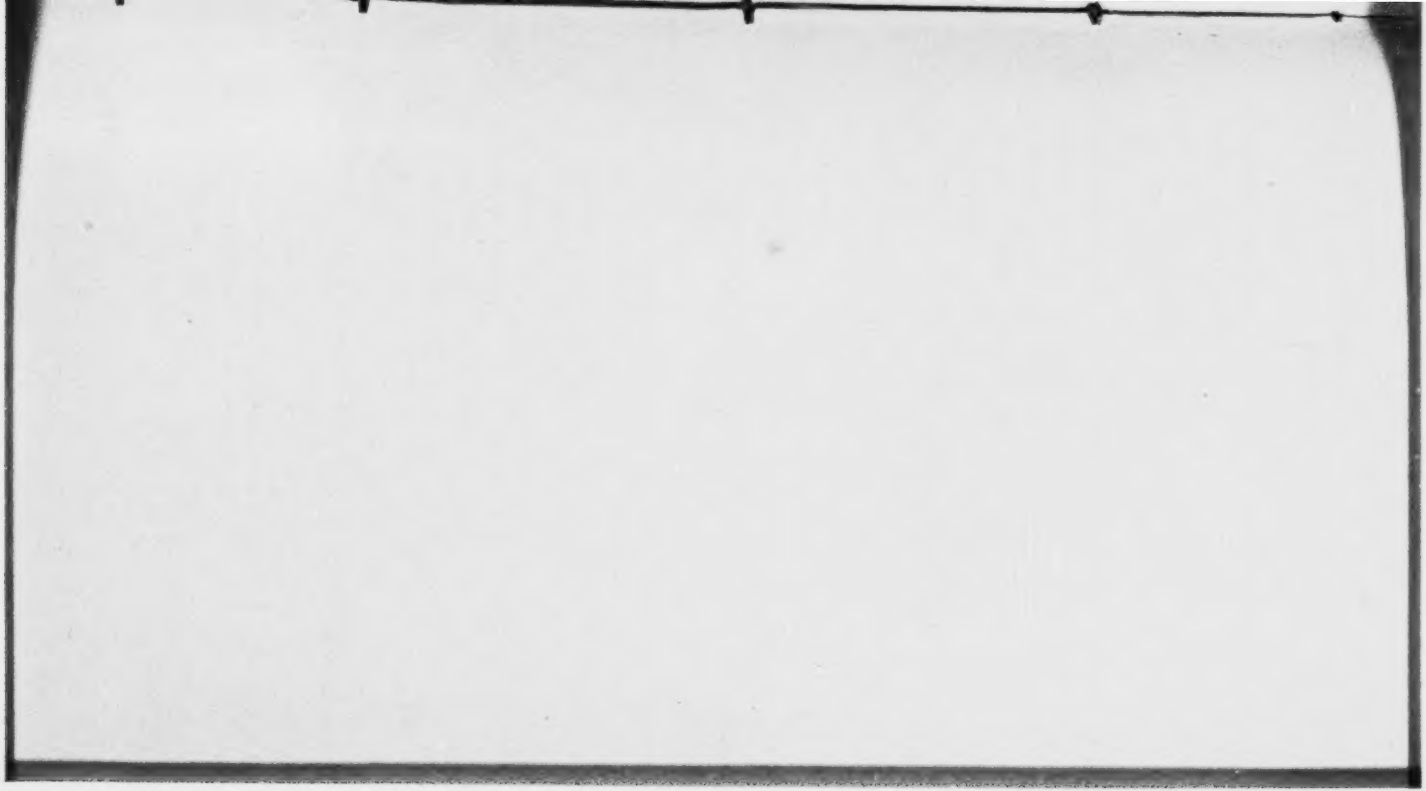
when the land upon each side of said river for several miles was totally submerged and overflowed.

Plaintiff further states that the counties of Atchison, Missouri, and Nemaha, Nebraska, are situated on opposite sides of the said Missouri river; that in the spring and summer of 1867 the current or main channel of said river assumed a permanent course along its west bluff or along the bluff in the State of Nebraska, leaving a large body of land, to wit, about 16,000 acres, to the east thereof on the Missouri side, which said land is situated south and west of the water's edge of said Missouri river at the time of the admission of plaintiff and defendant into the Union, commencing at a point on the Iowa line between the States of Missouri and Iowa, about the middle of the north line of the northeast quarter of section 34, township 67, range 43, west of the fifth principal meridian, running in a meandering course, south and east, through the west half of section 35, the north half and east half of section 2, the southwest quarter of section 1, the north half of section 12, to the range line; thence south in its meanderings along said range line between ranges 42 and 43 to the southwest corner of section 18, township 66, range 42; thence easterly and northerly across the southwest quarter of said section 18 and the east half of said section 18; thence north in its meanderings across the east half of section 7 and the southeast quarter of section 6; thence eastward in its meanderings and slightly to the north across the north half of section 5; thence south and east across the north and east half of section 4; thence south on the section line between sections 9 and 10 to about the center of the west line of the northwest quarter of section 10; thence southeasterly across said north quarter section and the southwest quarter of section 10; thence south across the west half of section 15, township 66, range 42; thence southwesterly across the west half of section 22, meandering westerly into the southeast quarter of section, 21; thence southwesterly across said southeast quarter sec-

Exhibit "A"



A to A' low water Edge of river surface marker



tion into and across the northwest quarter of section 28, the northeast quarter of section 29, the southwest quarter of section 29, into and across, in a southwesterly direction, the southeast quarter of section 30, where it strikes the present low-water edge of said Missouri river at a point on the south line of said section 30, township 66, range 42, Atchison county, Missouri, all of which is shown by Exhibit "A," filed herewith.

Plaintiff further states that on account of the peculiar condition of the land bordering upon each side of the river between the counties of Atchison, Missouri, and Nemaha county, Nebraska, at the time of the admission of the plaintiff and defendant into the Union and for a long time thereafter, and on account of the uncertain, peculiar, and changeable disposition of said river and its main channel, the exact boundary line between said States was not permanently fixed and in no condition to be fixed and determined under and according to the acts of admission of this plaintiff and this defendant into the Union until said river assumed its present main channel and course in the spring and summer of 1867.

That since said river has assumed its present course the channel between the counties of Atchison, Missouri, and Nemaha, Nebraska, in the spring and summer of 1867, the land on the Missouri side, in the Missouri bottom, and in Atchison county, Missouri, has, by constant draining and filling up, become subject to a high state of cultivation and is now inhabited by a large number of persons.

Plaintiff further states that on account of the channel of the Missouri river assuming its present course and position the inhabitants, residents, and land-owners on the Missouri side of said river are at a loss to know whether they belong to and are under the jurisdiction of The State of Nebraska, the defendant herein, or the jurisdiction of The State of Missouri, the plaintiff herein.

Plaintiff further states that it is entitled to jurisdiction

over all the land hereinbefore described east and north of of said river in Atchison county, and that said territory belongs to it under and by virtue of the act of the Congress of the United States approved June 7, 1836, extending its jurisdiction and boundary line as aforesaid, and that said territory so described legally and properly belongs to this plaintiff.

Plaintiff further states that the defendant herein, The State of Nebraska, claims jurisdiction over said land or a part thereof, the exact amount of which this plaintiff has no sufficient knowledge upon which to form a belief, and that said defendant claims said land by virtue of the act of Congress admitting it into the Union of States.

Plaintiff further states that it is highly important to the States of Missouri and Nebraska that the question of boundary be speedily and finally settled; that heretofore the peace of the people of the States of Missouri and Nebraska, and especially in the county of Atchison, Missouri, and Nemaha, Nebraska, have been seriously disturbed in consequence of frequent conflicts of jurisdiction arising from differences of opinion as to the location of the State line between said counties.

Plaintiff further states that the controversy herein involves question of jurisdiction and sovereignty, and that the State of Missouri has no adequate relief at law.

Wherefore this plaintiff prays that the State of Nebraska be required to answer the matters and the things herein set forth, and that upon a final hearing the boundary between this plaintiff, The State of Missouri, and the State of Nebraska be by order and decree of this court ascertained and established; that the right of possession, jurisdiction, and sovereignty of the State of Missouri to all the territory east and north of the center of the main channel of the Missouri river running between this plaintiff and this defendant at the present time be restored to the State of Missouri, and that this plaintiff be quieted in her title thereto, and that

the defendant, The State of Nebraska, be forever enjoined and restrained from disturbing said State of Missouri in the full enjoyment and possession of said land and territory, and that such other and further relief may be granted as the nature of the case may require.

THE STATE OF MISSOURI,
By LON V. STEPHENS. *Governor.*

EDWARD C. CROW,
Attorney General of Missouri.

[Endorsed:] Original. In the Supreme Court of the United States. State of Missouri *vs.* State of Nebraska. In equity.

EXHIBIT "B."

UNITED STATES OF AMERICA,
State of Missouri, County of Cole.

I, Samuel B. Jeffries, do upon my oath state that I am well acquainted with all the facts concerning the dispute of boundary line between the States of Missouri and Nebraska; that there is a large body of land lying north and east of the Missouri river, the jurisdiction of which is in dispute. It is claimed by the State of Nebraska and likewise by the State of Missouri.

To my best information, the amount of land in the controversy is about sixteen thousand (16,000) acres. The people of the State of Missouri, and especially those residing and owning property in Atchison county, have been and are now being seriously disturbed in consequence of frequent conflicts of jurisdiction arising from the difference of opinion as to the exact location of the State line between the said county and Nemaha county, Nebraska. The county officers of said Atchison county have been and are now being seriously disturbed in the execution of the duties of their office; that the land in dispute is continually increasing in value, and as it increases in value the difference of opinion as to the exact boundary line between said States will continue to increase also; all of which I testify as true upon my best information and belief and from a personal examination of the matters in controversy.

Given under my hand this 15th day of January, 1900.

SAM. B. JEFFRIES.

STATE OF MISSOURI, }
County of Cole. }

On this 15th day of January, 1900, before me personally appeared Samuel B. Jeffries, who, being by me duly sworn according to law, deposes and says that the foregoing is true to the best of his knowledge and belief.

[SEAL.]

JNO. R. GREEN,
Clerk of Supreme Court of Missouri,
By SPEED MOSBY,
Deputy Clerk.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1899.

THE STATE OF NEBRASKA,
Plaintiff,

v.

THE STATE OF MISSOURI,
Defendant.

Motion.

Now comes the State of Nebraska, defendant in the case of the State of Missouri v. the State of Nebraska, and plaintiff in the following cross-bill, and moves the Court for permission to file said cross-bill.

The State of Nebraska,

By S. J. Lumpkin.
Attorney General of Nebraska and Solicitor for Plaintiff.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1899.

THE STATE OF NEBRASKA,
Plaintiff,

v.

THE STATE OF MISSOURI,
Defendant.

To the Honorable, the Chief Justice and the justices of the Supreme Court of the United States:

The State of Nebraska, one of the states of the United States of America, admitted into the union of said states upon an equal footing with the original states in all respects whatsoever on the 1st day of March, 1867, by virtue of an act of Congress passed February 9th, 1867, brings this its cross-bill against the State of Missouri, one of the states of the United States of America, admitted into the

union of said states by virtue of an act of the Congress of the United States, approved March 6th, 1820.

And thereupon your orator complains and says that the said State of Missouri, on or about the 23d day of January, 1900, filed its bill of complaint in this honorable court against your orator, thereby praying:

> "That the State of Nebraska be required to answer the matters and the things herein set forth, and that upon a final hearing the boundary between this plaintiff, The State of Missouri, and the State of Nebraska be, by order and decree of this court, ascertained and established, that the right of possession, jurisdiction, and sovereignty of the State of Missouri to all the territory east and north of the center of the main channel of the Missouri river running between this plaintiff and this defendant at the present time be restored to the State of Missouri, and that this plaintiff be quieted in her title thereto, and that the defendant, the State of Nebraska, be forever enjoined and restrained from disturbing said State of Missouri in the full enjoyment and possession of said land and territory, and that such other and further relief may be granted as the nature of the case may require."

And your orator, being duly served with process of subpœna, appeared and put in its answer thereto, as by the said bill and said answer now remaining filed as of record in this honorable court, reference being thereto had, will more fully appear. Said cause has not yet been heard.

And your orator further showeth unto your honors that it is provided by an act of the Congress

of the United States, approved on the 19th day of April, 1864, that said State of Nebraska shall consist of all the territory included within the following boundaries, to-wit:

"Commencing at a point formed by the intersection of the western boundary of the State of Missouri with the fortieth degree north latitude; extending thence due west along said fortieth degree north latitude to a point formed by its intersection with the twenty-fifth degree of longitude west from Washington; thence north along said twenty-fifth degree of longitude to a point formed by its intersection with the forty-first degree of north latitude; thence west along said forty-first degree of north latitude to a point formed by its intersection with the twenty-seventh degree of longitude west from Washington; thence north along said twenty-seventh degree of west longitude to a point formed by its intersection with the forty-third degree of north latitude; thence east along said forty-third degree north latitude to the Keya Paha river; thence down the middle of the channel of said river with its meanderings to its junction with the Niobrara river; thence down the middle of the channel of said river following the meanderings thereof to its junction with the Missouri; thence down the middle of the channel of the Missouri river, and following the meanderings thereof, to the place of beginning."

Your orator further states that the act of the Congress approved March 6th, 1820, admitting the

defendant, the State of Missouri, into the union, provided that the western boundary line of said state should be as follows, that is to say: Commencing at a point where the parallel thirty-six degrees and thirty minutes north latitude is intersected at the south-west corner of said State of Missouri by a meridian line passing through the middle of the mouth of the Kansas River, where the same empties into the Missouri river; thence along the said meridean line to the intersection of the parallel of latitude which passes through the rapids of the Des Moines river, making the said line to correspond with the Indian boundary line.

Your orator further states that by an act of the Congress, approved June 7th, 1836, the western boundary line of said State of Missouri was changed so as to extend the same *to* the Missouri river, between the point where said meridean line passes through the mouth of the Kansas river and the northern boundary line of the State of Missouri.

And your orator further states that Atchison county, Missouri, and Nemaha county, Nebraska, are situated on opposite sides of the Missouri river; that exhibit "A," hereto attached as a part of this cross-bill, is a correct representation of the course of the Missouri river at the time the State of Nebraska was admitted into the Union as aforesaid, as said river run in its meanderings through sections 35 and 26, township 7, north, range 15, east of the sixth P. M.; through sections 30 and 31, township 7 north, range 16 east of the sixth P. M.; and through sections 1 and 2, town-

ship 6, range 15 aforesaid; that the course of said river, at said time, through the said sections, is shown upon exhibit "A," between the black lines marked "a" and "b" and that the land lying within the space bound on the north, east and south by said lines marked "b" and on the west by the line dividing the west half of section 2, township 16, range 15 aforesaid and marked "e," became, and is, by virtue of the said act of Congress of April 19, 1864. defining the boundaries of the State of Nebraska, a part of the Territory of Nebraska, and is otherwise known as "McKissick's Island," in Nemaha county in the State of Nebraska.

And your orator further states that said exhibit "A" is, as your orator is informed and believes, a true copy of the original government plat of "McKissick's Island," made under the directions of the Surveyor General of the United States, and now on file in his office at Leavenworth, in the state of Kansas.

Your orator further states that on or about the 5th day of July, 1867, in the night-time, aided by the digging of a ditch by some one to your orator unknown, the said Missouri River suddenly changed its course and forced its waters across the west half of section 2, township 6, range 15, aforesaid, and thus by avulsion placed the land heretofore described as "McKissick's Island" on the Missouri side of said river.

And your orator further states that exhibit "B," hereto attached as a part of this cross-bill, presents a correct representation of the old chan-

nel of said Missouri river as it existed on the north, and part of the west, and on the east, and south sides of "McKissick's Island" at the time the State of Nebraska was admitted into the Union, and said exhibit "B," also shows the present course of the Missouri river on the west side of said island; and also shows "McKissick's Island," and that part of the relict of the old channel of the Missouri river, as the same exist today on the east side of the Missouri river; and in this connection your orator further states that the line marked "a," and also marked "dividing line between Nebraska and Missouri," represents the center of the old channel of the Missouri river as the same existed when the State of Nebraska was admitted into the Union; that the line marked "b" and also marked "line of 1856," "old river line of 1856" represents the Nebraska bank of the river as it run around part of "McKissick's Island" at the time Nebraska was admitted into the Union, as aforesaid; that the space between said lines marked "a" and "b" represents the relict of the old channel of the Missouri river which is now a part of "McKissick's Island;" that the figures on the dotted lines running between the lines marked "a" and "b" in said last mentioned space, represent the distance between said lines "a" and "b;" that the letter "a" and the figures thereafter within the subdivisions of said relict, indicate the number of acres in each subdivision; and that the said relict and said island constitute a part of the county of Nemaha in the State of Nebraska.

Your orator further states that said exhibit "B" is, as your orator is informed and believes, a true copy of a subdivision plat and notes made by the authority of the county commissioners of Nemaha county, Nebraska, and of Atchison county, Missouri, and filed on the 10th day of April, 1895, in the office of the county clerk of Nemaha county, Nebraska; and in this connection your orator further alleges that said subdivision plat and notes were made after a survey of said Island and said relict, made under the authority aforesaid, by J. M. Hacker, county surveyor of Nemaha, county, first, in connection with B. F. Rummerfield, county surveyor of Atchison county, Missouri, and secondly, in connection with B. A. Quick, county surveyor of Atchison county, Missouri, and the successor in office of B. F. Rummerfield, as county surveyor.

Your orator further states that the inhabitants of said island and said relict, and the owners thereof recognize the jurisdiction of the State of Nebraska, and always have done so; that at all times since the admission of the State of Nebraska into the Union, the inhabitants of said island who were entitled to vote, and who did vote, cast their votes in Nemaha county, Nebraska; that for a great many years last past, citizens have been drawn from the body of said inhabitants to serve as jurors in the district court of Nemaha county; and that many of said citizens have served on juries in said court; that the chain of title to all the lands comprised within the boundaries of said island, and including said relict, is recorded in the office of the Register

of deeds of Nemaha county, and that all transfers of lands, known by the owners of said lands to be situated within the boundaries of said island or said relict, are recorded in Nemaha county, and that the only doubt, so far as your orator is informed and believes, which exists in the minds of said inhabitants in connection with the said boundary lines of the State of Nebraska and the State of Missouri, is with respect to the exact location of the center of said old channel of the river, as the same existed at the time your orator was admitted into the Union. But no one of said inhabitants, so far as your orator is informed and believes, denies that the center of the old channel of said Missouri river, wherever that may be located, constitutes the boundary line of the State of Nebraska.

Your orator further states that it claims, and is entitled to jurisdiction over all the territory comprised within said island and said relict; that it is highly important to the State of Missouri and the State of Nebraska that the exact location of the center of the said old channel, at the time that said island and said relict were placed by avulsion on the east side of the Missouri river, should be ascertained, and permanent monuments erected to indicate the same.

Your orator further states that the State of Missouri pretends to have jurisdiction over the territory comprised in said island and said relict, and it bases its pretense on the alleged ground that said island and said relict have been attached to the State of Missouri by accretion, which alleged

ground your orator states is without any foundation in fact, and your orator well hoped that the said State of Missouri, by reason of the facts hereinbefore recited, would abandon its pretenses, and would not proceed in the said suit against your orator. But the State of Missouri threatens and intends to proceed in said suit and to bring the cause on for hearing in due course.

All which actings, doings and pretensions are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your orator. In tender consideration whereof, and forasmuch as your orator is remediless in the premises by the strict rule of the common law, and cannot have adequate relief except in a court of equity, where matters of this kind are properly cognizable and relievable.

To the end, therefore, that the State of Missouri may, if it can, show why your orator should not have the relief herein prayed, and that it answer this cross bill of your orator according to the course and practice of this court, but not under oath, its answer under oath being hereby expressly waived, and that by the decree of your Honors "McKissick's Island" and the relict of the old channel of the Missouri river, as both are described in exhibit "B", be declared to be a part of the State of Nebraska; that the title thereto be quieted in the said State of Nebraska; that the right of possesion, jurisdiction and sovereignty of said last-mentioned state to and over said island and relict be confirmed; that the boundary line be-

tween that part of the State of Missouri known as Atchison county and that part of the State of Nebraska known as Nemaha county be ascertained, established and permanent monuments erected to indicate the location of the same; that the State of Missouri be by the order of and injunction of your Honors forever enjoined and restrained from disturbing the State of Nebraska in the full enjoyment and possession of said island and relict; that the bill of the said State of Missouri in the said suit of the State of Missouri against the State of Nebraska be forthwith dismissed with costs; that this bill be taken as a cross-bill in the said suit of the State of Missouri *v.* the State of Nebraska; that the cause of the State of Missouri *v.* the State of Nebraska be heard together and one decree be made in both, and that your orator may have such other and further relief as the equity of the case may require, and to your Honors may seem meet.

May it please your Honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, directed to the said defendant, the State of Missouri, commanding it on a certain day and under a certain penalty to be and appear in this honorable court, then and there to answer the premises, and to stand to perform and abide by such order and decree as may be made against it.

And your orator will ever pray, etc.

Attorney General of the State of Nebraska and Solicitor for Plaintiff.

of Counsel.

DISTRICT OF NEBRASKA,)
LANCASTER COUNTY,) ss.

Constantine J. Smyth, being first duly sworn, says that he is the Attorney General of the State of Nebraska; that he has read the foregoing Cross-Bill and knows the contents thereof; that he has made a careful investigation of the matters set forth in said Cross-Bill, and that he believes all the statements in said Cross-Bill contained to be true.

Constantine J. Smyth

Subscribed in my presence, and sworn to before me this 17th day of May, 1900.

Catherine A. Dall
Notary Public.

(Seal)

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. ———. Original.

STATE OF NEBRASKA, Plaintiff,

vs.

STATE OF MISSOURI, Defendant.

ANSWER TO CROSS BILL OF STATE OF NEBRASKA.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now comes the defendant to this cross bill, saving and reserving to itself all and all manner of advantages and exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the cross bill of the State of Nebraska, and makes answer thereto as follows:

Admits that the State of Nebraska is one of the States of the United States of America and was admitted into the Union of said States upon an equal footing with the original states in all respects, by virtue of an act of Congress, but

as to whether or not it was admitted as such on the first day of March, 1867, this defendant has no sufficient information upon which to form a belief and therefore denies the same.

Admits that the State of Missouri, this defendant in cross bill, is one of the States of the United States of America and as such was admitted into the Union of said States by virtue of an act of Congress of the United States approved March 6, 1820.

Admits that the said State of Missouri on or about the 23rd day of January, 1900, filed its bill of complaint in this Honorable Court against the said State of Nebraska and thereby prayed that the State of Nebraska be required to answer the matters and things therein set forth and that upon a final hearing the boundary between said States of Missouri and Nebraska be by order and decree of the Court ascertained and established; that the right of possession, jurisdiction and sovereignty of the State of Missouri to all the territory east and north of the center of the main channel of the Missouri river running between the said States of Missouri and Nebraska at the present time be restored to the State of Missouri and that said State of Missouri be quieted in her title thereto and that said State of Nebraska be forever enjoined and restrained from disturbing said State of Missouri in the full enjoyment and possession of said land or territory and that such other and further relief may be granted as the nature of the case may require.

Admits that the boundary line of the State of Nebraska was by act of Congress approved on the 19th day of April, 1864, fixed and determined as set out by said State of Nebraska in its cross bill herein.

Admits that under the act of Congress approved March 6, 1820, admitting the State of Missouri into the Union, it was provided that the western boundary line of said State should be as follows, that is to say: Commencing at the point where the parallel 36 degrees and 30 minutes north latitude is intersected at the southwest corner of said State

of Missouri, up to the meridian line passing through the middle of the mouth of the Kansas river, where the same empties into the Missouri river; thence, along the meridian line to the intersection of the parallel of latitude which passes through the rapids of the Des Moines river, making the said line to correspond with the Indian boundary line.

Admits that by the act of Congress approved June 7, 1836, the western boundary line of said State of Missouri was changed and that such change extended said boundary line to the center of the middle channel of the Missouri river wherever it might at any time run, but not *to* the Missouri river, between the points where the said meridian passes through the mouth of the Kansas river to the northern boundary line of the State of Missouri, as alleged in the said cross bill of the said State of Nebraska.

Admits that Atchison county, Missouri and Nemaha county, Nebraska, are situated on opposite sides of the Missouri river, but denies that plaintiff's exhibit "A" in said cross bill is a correct representation of the course of the Missouri river at the time the State of Nebraska was admitted into the Union, as said river ran in its meanderings through sections 35 and 36, township 7, north range 15 east of the 6th P. M. and through sections 1 and 2, township 6, range 15 aforesaid; denies that the course of said river at said time through the said sections is properly shown upon said exhibit "A" in plaintiff's cross bill and that the line lying between the space bounded on the north, east and south by the lines marked "b" and on the west by the line dividing the west half of section 2, township 16, range 15, and marked "c" became and is by virtue of said act of Congress of April 16, 1864, or by any other act of Congress defining the boundaries of the State of Nebraska, a part of the territory of Nebraska, and that such territory known as "McKissick's Island" is in Nemaha county, Nebraska or belongs to the jurisdiction of the said State of Nebraska.

Defendant denies that exhibit "A" of the plaintiff in

cross bill is a true copy of the original government plat of McKissick's Island, and denies that it was made under the direction of the Surveyor General of the United States and is now on file in his office at Leavenworth, in the State of Kansas.

Further answering, this defendant in cross bill denies that on or about the fifth day of July, 1867, or at any other date, in the night time aided by the digging of a ditch by any person whomsoever, the said Missouri river suddenly changed its course and forced its waters across the west half of section 2, township 6, range 15, aforesaid, and thus by avulsion placed the land known as McKissick's Island on the Missouri side of said river, but alleges the truth to be that said Missouri river at said point at the time of the admission of the States of Missouri and of Nebraska into the Union of States the land bordering upon each side of said river was wild, swampy, uninhabited and uncultivated; that it contained a large number of sloughs, marshes and that at nearly all times of the year it was covered with water, which rendered it totally useless for agricultural or other purposes; that at said times and for a long time thereafter the channel of said Missouri river was continually changing from place to place, caused by the force of accretions and deposits along the banks thereof and by the constant carrying away of the opposite banks, and that by reason of such conditions the said Missouri river did not assume a permanent course at such point until in the spring of 1867 when it assumed its present course along the west bluff or along the bluff on the Nebraska side.

Denies that exhibit "B," attached to and made a part of the cross bill herein, presents a correct representation of the old channel of said Missouri river as it existed on the north and part of the west and on the east and south sides of said McKissick's Island at the time the State of Nebraska was admitted into the Union or at any other time, and denies that said exhibit "B" shows the present course of said Missouri river on the west side of said island or

shows McKissick's Island and that part of the relict of the old channel of the Missouri river as the same exists today on the east side of the Missouri river or as it has ever existed; denies that the line marked "a" on said exhibit is the dividing line between Nebraska and Missouri, or that it represents the center of the old channel of the Missouri river as the same existed when the State of Nebraska was admitted into the Union, and denies that the line marked "b" or the line marked "line of 1856" or the "old channel line of 1856" represents the Nebraska bank of the river as it ran around a part of McKissick's Island at the time Nebraska was admitted into the Union, and denies that the space between said lines marked "a" and "b" represents the relict of the old channel of the Missouri river, which is now a part of McKissick's Island, and denies that the figures and the dotted line running between the marked lines "a" and "b" in said last mentioned space represents the distance between said lines "a" and "b;" that the letter "a" and the figures thereafter within the subdivisions of said relict indicate the number of acres in each subdivision or that said relict and said island constitute a part of the county of Nemaha in the State of Nebraska, but avers the fact to be that said land constitutes a part of the county of Atchison in the State of Missouri.

Denies that said exhibit "B" is a true copy of the subdivision plat and notes made by the authority of the County Commissioners of Nemaha county, Nebraska, and of Atchison county, Missouri, filed on the 10th day of April, 1895, in the office of the County Clerk of Nemaha county, Nebraska; and denies that said subdivision plat and notes were made after a survey of said island and said relict under the authority aforesaid by J. M. Hacker, County Surveyor of Nemaha county, first, in connection with B. F. Rummerfield, County Surveyor of Atchison county, Missouri, and secondly, in connection with B. A. Quick, County Surveyor of Atchison county, Missouri, the successor in office of B. F. Rummerfield, aforesaid. And in this connection this de-

fendant in cross bill denies the authority of the said Hacker, Rummerfield and Quick or any one or all of them to make such survey and thereby bind the State of Missouri or the State of Nebraska. Denies that the owners of the land mentioned in said cross bill and that the inhabitants of said territory have recognized and do now recognize the jurisdiction of the State of Nebraska over them; denies that at all times since the admission of said State of Nebraska into the Union the inhabitants of said island, so described by plaintiff in cross bill, were entitled to vote and did vote in Nemaha county, Nebraska. Denies that for a great many years last past citizens have been drawn from the body of said inhabitants to serve as jurors in the District Court of said Nemaha county, and that many of said citizens have served on juries in said court; denies that the chain of title to all the lands comprised within the boundary of said island including said relict as described by planitiff in cross bill, is recorded in the office of the Register of Deeds of Nemaha county, and that all transfers of land known by the owners of said land to be situated within the boundaries of said island or said relict, are recorded in said Nemaha county, and denies that the only question of dispute existing in the minds of said inhabitants in connection with said boundary line of the State of Nebraska and the State of Missouri is with respect to the exact location of the center of the old channel of the said Missouri river, as the same existed at the time the State of Nebraska was admitted into the Union, but avers the fact to be that the center of the main channel of the Missouri river is now and always has been claimed by the said State of Missouri and by all of the inhabitants thereof and of said territory to be the boundary line between said States at said point.

Admits that it is highly important to the State of Missouri and to the State of Nebraska that the exact location of the boundary line between said states at said points be determined by judgment of this Court.

Admits that the State of Missouri claims jurisdiction over the territory comprised in said island and relict as described in plaintiff's cross bill, but denies that said claim is grounded upon a mistaken idea as to the facts connected with the change in the channel of said river, but alleges the fact to be that said claim is founded upon facts as alleged in said original bill of complaint filed by this defendant in cross bill in good faith and with a view to determining the exact boundary line between said States and obtaining a decree of this Court to the effect that the center of the middle channel of the Missouri river should be the boundary line of the said State of Missouri as in the act of Congress under date of June 7, 1836, declared.

Defendant denies each and every other allegation contained in said cross bill not heretofore expressly denied or admitted to be true, and having fully answered the said cross bill prays that a decree of this Court be herein made against the said State of Nebraska, determining and fixing the boundary between the said State of Missouri and the State of Nebraska, at and to the center of the middle channel of the Missouri river as it now runs and that all of the land at such point east and north of said channel be restored to the State of Missouri and to its jurisdiction thereover and that said State of Missouri be quieted in her title thereto and that the State of Nebraska be forever restrained and enjoined from disturbing the said State of Missouri in the full enjoyment of said possession of said land and territory, as in its original bill of complaint herein filed, and that such other and further relief be granted as the Court may deem necessary.

THE STATE OF MISSOURI.

By ————————,

Counsel.

No. 3 Orig.

Office Supreme Court U. S.
FILED
APR 30 1902
JAMES H. MCKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

Replication to Answer of State of Missouri.

Filed April 30, 1902.

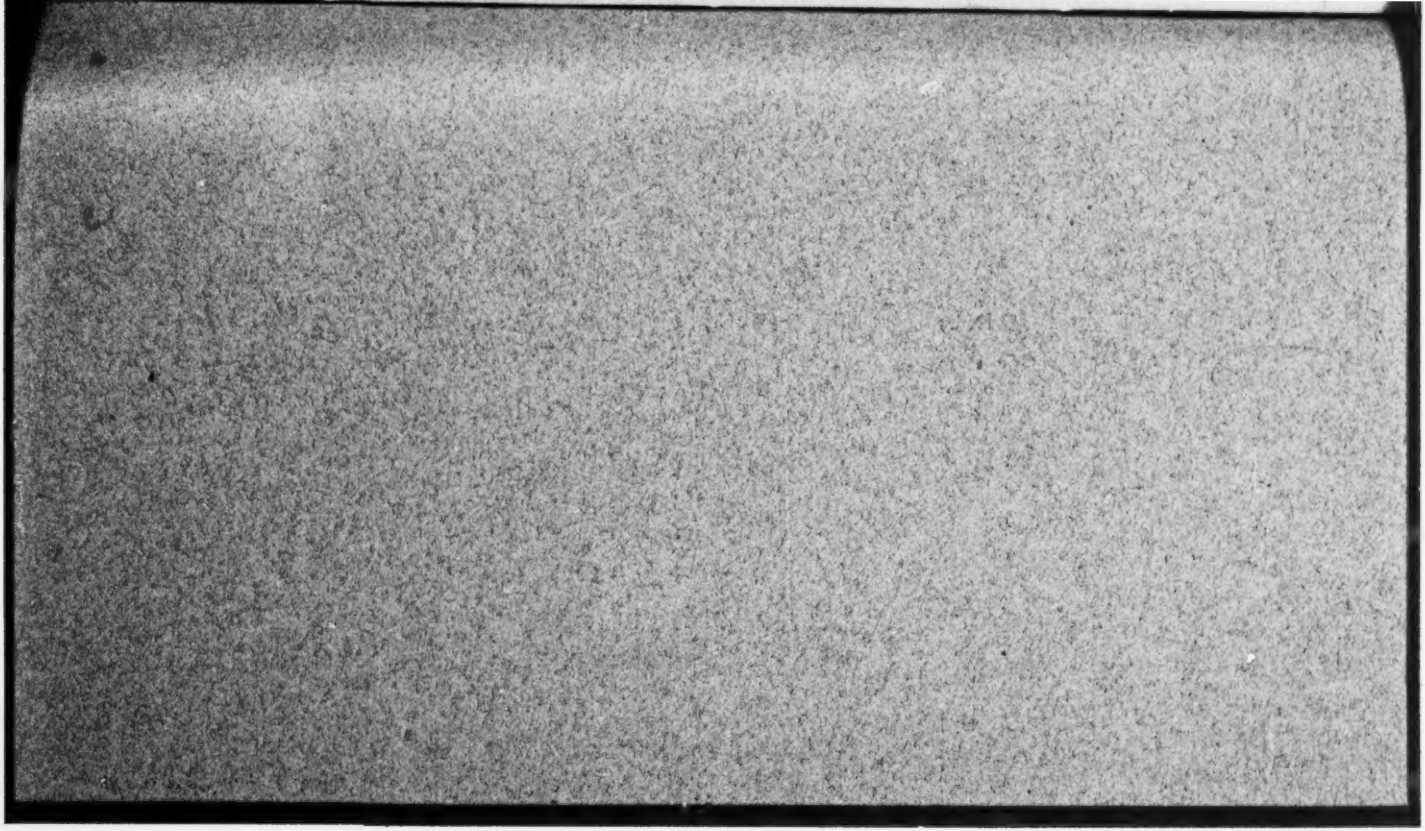
THE STATE OF NEBRASKA,
Plaintiff,

v.

THE STATE OF MISSOURI,
Defendant.

REPLICATION TO THE ANSWER OF THE STATE OF MISSOURI TO THE CROSS-BILL OF THE STATE OF NEARASKA.

FRANK N. PROUT, *Attorney General,*
For Plaintiff.



In the Supreme Court of the United States.

OCTOBER TERM, 1901.

THE STATE OF NEBRASKA,
Plaintiff,
v.
STATE OF MISSOURI,
Defendant.

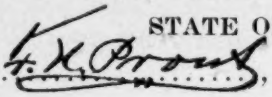
REPLICATION TO THE ANSWER OF THE STATE OF MISSOURI TO THE CROSS-BILL OF THE STATE OF NEBRASKA.

To the Honorable the Chief Justice and Associate justices of the Supreme Court of the United States:

This replicant, the State of Nebraska, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, the State of Missouri, for replication thereunto saith that it doth and will aver, maintain, and prove its said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this replicant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and suffi-

ciently replied unto, confessed, or avoided, traversed, or denied, is true; all which matters and things this replicant is ready to aver, maintain, and prove as this honorable Court shall direct and humbly prays as in and by its said bill it hath already prayed.

STATE OF NEBRASKA,

By  , *Attorney General,*

Its Counsel.

IN THE

Supreme Court of the United Stat

OCTOBER TERM, 1901.

No. 5 Original.

STATE OF MISSOURI, Plaintiff,

vs.

STATE OF NEBRASKA, Defendant.

PLAINTIFF'S REPLICATION.

Solicitor for Plaintiff

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. ———. Original.

STATE OF MISSOURI, Plaintiff,

vs.

STATE OF NEBRASKA, Defendant.

PLAINTIFF'S REPLICATION.

Now comes this replicant, the State of Missouri, saving and reserving to itself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, the State of Nebraska, for replication thereunto saith that it doth and will ever aver, maintain and prove its said bill to be true, certain and sufficient in the law to be answered unto by the said defendant; that the answer of the said defendant is very uncertain, evasive and insufficient in law to be replied unto by this replicant.

Plaintiff denies that the Act of Congress of June 7th, 1836, extended the boundary line between this plaintiff and defendant only to the water's edge of the Missouri river, as it then ran, but avers the fact to be as stated in plaintiff's bill of complaint herein.

Plaintiff denies that the changes which the channel of the Missouri river at the point referred to in plaintiff's bill of complaint was continually undergoing at the time and for a long time after, plaintiff and defendant were admitted into the Union, were small, and such as the channel of said river is constantly undergoing, and avers the changes in the channel of said river to be as charged in the bill of complaint herein.

Plaintiff denies that the boundary lines between said states were at any time prior to the spring of 1876 permanently fixed, or capable of being correctly located; denies that the center of the middle channel of the Missouri river in the one case, and the waters edge of said river in the other case is now or ever was the boundary line between said states of Nebraska and Missouri, but avers the truth to be as alleged in plaintiff's bill of complaint herein.

Plaintiff denies that there was on the 5th day of July, 1867, or on any other date or dates, subsequent to the admission of the state of Nebraska into the Union, a sudden change in the channel of said Missouri river at the point mentioned in defendant's said answer, but avers the fact to be that said river assumed its present course and channel as in the bill of complaint stated.

Plaintiff denies that Exhibit "A," filed by defendant and attached to its answer herein, is a true copy of the original government plat made under the direction of the Surveyor General of the United States, and now on file in the Surveyor General's office at Leavenworth, Kansas, of a part of the land described in plaintiff's bill as shown on plaintiff's Exhibit "A" as "McKissick's Island," as the same existed at the time of the admission of defendant into the Union; denies that the space on defendant's said Exhibit "A," marked "Missouri River," commencing at a point near the center of the north line of the northwest quarter of the northwest quarter of section 2, township 6, north range 15 east of the 6th p. m., and running thence in its meanderings northeast, northwest, northeast, east, southeast, south, southwest as west, as indicated by the representation of the arrow appearing in said space in said exhibit, in-

dicates the course of the Missouri river as it flowed along the sides of McKissick's Island at the time of defendant's admission into the Union.

Plaintiff further replying denies that on or about the 5th day of July, 1867, or at any other time subsequent to the admission of defendant into the Union, the Missouri river, aided by the digging of a ditch, by any person whomsoever, across McKissick's Island, as described in defendant's answer, or at any other place or point, suddenly changed its channel or formed a new channel where it has ever since, and does now run, but avers the fact to be that said channel located itself as it now exists and runs in the manner as described in plaintiff's bill of complaint.

Plaintiff further replying denies that defendant's Exhibit "C," which is made a part of its answer, is a true copy of a subdivision plat and notes made by the authority of the board of county commissioners of Nemaha county, Nebraska, and by the authority of Atchison county, Missouri, and filed on the 10th day of April, 1895, in the office of county clerk of said Nemaha county, Nebraska; denies that said alleged plat and notes were made after a survey of said island of McKissick, and said relict mentioned in defendant's answer, under authority by J. M. Hacker, county surveyor of Nemaha county, Nebraska, in connection, first, with B. F. Rummerfield, county surveyor of Atchison county, Missouri, and second, in connection with D. A. Quick, county surveyor of Atchison county, Missouri, the successor in office to the said B. F. Rummerfield; denies that said survey, plat and notes were ever at any time made by any person or persons possessing authority so to do, or to bind this plaintiff thereby.

Plaintiff further replying denies the correctness of defendant's several exhibits; denies that the true boundary line between said states at the points mentioned in the bill of complaint and answer is as stated in said answer. Denies that the Nishnobotna river, which flows southwest across the state line dividing Iowa from Missouri at a point about the center of the north line of the northwest fourth of section 35, town-

ship 67, range 42 west of 5th p. m., thence according to its meanderings southwest to a point near the center of the northwest fourth of section 10, township 66, range 42, aforesaid, changed its course on or about the 5th day of July, 1867, or at any other time, by cutting through the land which had separated it from the old channel of the Missouri river; denies that said Nishnabotna river now or ever has flowed through said old channel of the Missouri river; and denies that said Nishnabotna river now forms or at any time has formed the boundary line for this plaintiff between the point where it enters the old channel and where it enters the Missouri river as it now runs.

Plaintiff further replying states that as to whether, as alleged in defendant's answer, that all the inhabitants in that part of land described in plaintiff's bill of complaint and known as McKissick's Island, and the relict of the old channel of the Missouri river, as alleged in and as it appears on defendant's Exhibit "C," submit to and always have submitted to the jurisdiction of the state of Nebraska, and that said island and that said relict are known as Island Precinct of the county of Nemaha, and that at all times all of the inhabitants of said precinct who were entitled to vote and who did vote, cast their votes in said county of Nemaha, state of Nebraska, and for a great many years last past citizens have been drawn from the body of said inhabitants to serve on juries in the district courts of said county, and that the chain of title comprising all the boundaries of said county and including said relict is recorded in the office of the register of deeds of said Nemaha county, and that the transfers of land known by the owner of said lands to be situated within said island and the boundary of said relict are recorded within said county, this plaintiff has no sufficient information upon which to form a belief and therefore, denies the same.

Plaintiff further replying denies that defendant as alleged in its answer is and always has been since its admission into the Union entitled to the jurisdiction over said island and said relict, by the Act of Congress admitting said defendant into

the Union; and that all other matters and things in said answer contained material and effectual in the law to be replied unto and not herein well and sufficiently replied unto or admitted are denied as untrue; all of which matters and things this replicant is ready to aver, maintain and prove as this Honorable Court shall direct, and humbly prays as in and by its said bill it hath already prayed.

Solicitor for Plaintiff.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

NO.——, ORIGINAL

STATE OF MISSOURI, Complainant,

vs.

STATE OF NEBRASKA, Defendant.

STIPULATION TO SUBMIT CASE ON COMMISSIONERS' FINDING OF FACT AND THE PLEADINGS.

EDWARD C. CROW, Attorney-General
SAM B. JEFFERIES, Ass't Attorney-General,
For Complainant.

F. N. PROUT, Attorney-General,
W. H. KELLIGER,
For Defendant.

IN THE SUPREME COURT OF THE UNITED STATES.

STATE OF MISSOURI, Complainant,

vs.

STATE OF NEBRASKA, Defendant.

Now comes the parties in the above entitled cause, by their respective attorneys, and enter into and make the following stipulation and agreement:

First, It is hereby agreed that the findings of fact made by the Commissioners herein, as set out in their report, shall constitute and is a proper finding of fact herein, and is in all respects true and correct, and no exceptions are taken thereto by either party and all exceptions to the said finding of facts are hereby waived.

It is further agreed that the hereto attached Defendant's Exhibit "B," Complainant's Exhibit "B," Defendant's Exhibit "D," and Defendant's Exhibit "E," with the eleven sectional maps, numbered one to eleven inclusive, together with the field notes attached thereto, all of which are referred to by the Commissioners in their report, shall be hereto attached and made a part hereof, and that the copies of said exhibits, as hereto attached and made a part hereof, are true and correct copies of the same.

It is futher agreed that the petition to the Federal Congress by the State of Missouri through its legislative branch of government, petitioning Congress to extend the western boundary line of the State of Missouri so as to include what is known as Platt's Purchase, and referred to in Complainant's bill, was introduced in evidence by complainant and a copy of which is hereto attached and made a part hereof, and marked Complainant's Exhibit "D."

It is further agreed that in view of this agreement with reference to the finding of facts by the Commissioners, the record of the evidence herein need not be printed and that this

cause shall be submitted to the Court upon questions of law arising out of the pleadings, the report of the Commissioners and this stipulation, and each party shall present to the Court in its brief, such propositions of law as it may rely upon.

STATE OF MISSOURI, Complainant,
By EDWARD C. CROW, Attorney-General,
SAM B. JEFFRIES, Ass't Attorney-General.
STATE OF NEBRASKA, Defendant,
By F. N. PROUT, Attorney-General.
W. H. KELLIGER, Special Counsel.

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA.

THE STATE OF MISSOURI, Complainant,
vs.
THE STATE OF NEBRASKA, Defendant.

Whereas, the Honorable Commissioners appointed by this Court to hear and report the evidence in this case and counsel for the respective parties are in doubt concerning the powers of said commissioners under the order of this Court, and the former stipulation between the parties hereto providing for such appointment, it is therefore further stipulated and agreed between the parties hereto that the said Commissioners shall in addition to taking and reporting the evidence adduced in said case, make such findings of fact as shall from the evidence seem to them right and proper, and report such findings of fact to the Court, and transmit the same to the Court, along with the evidence so taken and reported.

Signed this 10th day of October, 1902.

THE STATE OF MISSOURI,
By EDWARD C. CROW, Attorney-General,
SAM B. JEFFRIES, Ass't Attorney-General.
THE STATE OF NEBRASKA,
By F. N. PROUT, Attorney-General.
W. H. KELLAGAR, Special Counsel.

IN THE SPREME COURT OF THE UNITED STATES.

THE STATE OF MISSOURI, Complainant,
vs.
THE STATE OF NEBRASKA, Defendant. } Certificate.

We, the undersigned Commissioners appointed to take the evidence in the above entitled cause, hereby certify that the foregoing is a true and complete copy of all the evidence offered and taken by us in said cause, together with the original exhibits introduced by each party thereto.

Witness our hands this 12th day of December, 1902.

JOHN W. HALLIBURTON,
ALFRED HAZLETT,
Commissioners.

IN THE SUPREME COURT OF THE UNITED STATES

THE STATE OF MISSOURI, Complainant,
vs.
THE STATE OF NEBRASKA, Defendant. } Commissioners' findings.

To the Honorable Chief Justice, and the Associate Justices of the Supreme Court of the United States:

We, the undersigned, your Commissioners, appointed pursuant to the order of this Court entered May 5th, 1902, and after having taken the oath to impartially discharge all the duties devolving upon us as such Commmissioners we heard testimony offered by the parties at Rock Port, Atchison county, Missouri, on the 9th day of October, 1902, and at Auburn, Nemaha county, State of Nebraska, on October 10th, 1902; whereupon at the request of the parties we adjourned the further taking of testimony to the 21st day of October, 1902, at Hamburg, in the State of Iowa, and after having heard

there all the testimony offered by either of the parties the further hearing of said cause was adjourned to the 11th day of December, 1902, at Kansas City, in the State of Missouri; and now, on this 11th day of December, 1902, all the parties being before us at Kansas City, Missouri, and neither side desiring to offer any further testimony the taking of further testimony in said cause is closed; thereupon we heard the statements and arguments of the respective counsel, and being fully advised in the premises, and by virtue of the order appointing us as Commissioners, and by the express stipulation of the counsel of the parties to this action, we make and return with the evidence taken by us our findings of fact as follows:

1. We find from the evidence that defendant's Exhibit "B" attached to its answer herein, correctly shows the bed and channel of the Missouri river as it existed prior to July 5th, 1867; that it was defined and run substantially in the same channel from the admission of the respective states to the Union until July 5th, 1867, having only such variations as naturally follow in the course of time in the Missouri river, varying from one side of the river to the other.

2. We find from the evidence that prior to July 5th, 1867, that what was known in Nemaha county, Nebraska, as Island Precinct, which includes McKissick Island, was located in the bend of the river as shown by Defendant's said Exhibit "B," McKissick Island being the northern and eastern portion of said land, situated in the bend of the river, being north of what is marked as the slough in said exhibit. We find that McKissick Island, prior to July 5th, 1867, as surveyed by the United States Government, contained 2910 acres of land. We find that on July 5th, 1867, and within one day during the time of high water, the Missouri river cut a new channel across and through the narrow neck of land at the west end of Island Precinct, about one-half mile wide, making for itself a new channel, and passing through the territory of Nebraska

for the distance across the neck of the ox-bow, as shown by Complainant's Exhibit "B." We further find that from and after July 5th, 1867, the waters of the Missouri river ceased running around McKissick Island and gradually in the course of a few years the old channel dried up and became dry and tillable land, and valuable for agricultural purposes, thus vacating the old Missouri bed about fifteen miles in length. We find that Complainant's Exhibit "B" shows the bed or channel of the Missouri river as it now runs, and as it has run since July 5th, 1867.

We further find that the County Surveyor of Nemaha county, Nebraska, acting jointly with the County Surveyors of Atchison county, Missouri, along about the year 1895 made surveys of the abandoned bed of the Missouri River; that in making such survey the surveyor of Nemaha county, Nebraska started from the original Government survey on the Nebraska side of the river as it was originally made, finding and locating the original bank of the Missouri River on the Nebraska side; that the County Surveyors of Atchison county, Missouri, started from the original Government survey on the Missouri side and from the original Government corners located the original bank of the Missouri River on the Missouri side; that from the locations of the original bank on each side of the river these surveys jointly located a line around the old Missouri bed equa distant from the original banks, which surveys are correctly shown by Defendant's Exhibit "D" and the second map attached to its answer herein, together with the eleven sectional maps numbered from 1 to 11 inclusive, and field notes thereto attached, and being Defendant's Exhibit "E."

We further find from the evidence that at the time this survey was made, and at the present time, there was no means of exactly locating the thread of the main channel of the Missouri River as it ran prior to July 5th, 1867.

We further find that in making said survey and said equa

distant line from the old banks of the river the surveyors planted a stone every quarter of a mile, marking the stone with the letter "M" on the Missouri side, and the letter "N" on the Nebraska side. We find that some of said stones are still in existence and all of such points can be correctly located.

We further find from the evidence that after said survey the authorities of Nemaha county, Nebraska, claimed 1869. 56 acres of land, being the land on the Nebraska side of the equa distant line established by said survey and attached the same to the land of the adjoining proprietors as shown by Defendant's Exhibits "D" and "E" and the field notes attached to Exhibit "E," and that the authorities of Atchison county, Missouri, platted said old Missouri River bed from the original Missouri bank up to Island Precinct and McKissick Island as shown by Complainant's Exhibit "B," the red line on said Exhibit "B" showing the old bank on the Missouri side of the river as it run prior to July 5th, 1867, and claimed that all of said land is in the State of Missouri.

We further find that the plats and field notes introduced by the respective parties as exhibits herein, are authenticated copies of the records of the respective counties of Atchison county, Missouri, and Nemaha county, Nebraska, as they appear to be.

Complainant prays the Commissioners to make the following finding of facts and no other: "Complainant prays the Commissioners to find that during the month of July, 1867, the Missouri River at the point in controversy suddenly changed its thread and course from its former channel as shown by Defendant's Exhibit "B," to its present channel, as shown by Complainant's Exhibit "B," and that since said change of July, 1867, said river has followed its present channel with no material variation; and that the Commissioners make no further finding of facts for the reason that the act of Congress approved June 7th, 1836, annexing Platt's pur-

chase to the jurisdiction of Missouri establishes the thread of the middle channel of said river as it then run or at any time in the future might run as the boundry line between said states."

Deeming the conclusion of the Complainant's request to be a question of law, we decline to pass upon it and leave it for the determination of the Court.

The Commissioners having declined the request of Complainant to make no further finding than as embodied in its first request, Complainant further prays the Commissioners to find from the evidence at the time of the cutoff by the Missouri River in July, 1867, the middle thread or main channel of said river running around McKissick Island followed the line drawn equa distant from either bank of said river as shown by the Defendant's Exhibits "D" and "E," until said line intersects a straight line drawn from the southwest corner of the northeast quarter of the southeast quarter of section 6, to the southwest corner of the northwest quarter of the northwest quarter of section 10, township 66, range 42 west, of the fifth principal meridian, to what was then known as Sidney Landing, situated at the point where the Nishnebotne River entered into the Missouri River, and that no part of the middle thread of said river at the time of said cutoff and for several years prior thereto run north of said straight line so drawn, so that all of said territory north of the line so drawn be declared as territory of the State of Missouri, and that the Commissioners further find that said straight line so drawn be followed as the middle thread of said river, until it again intersects with said equa distant line, and that from said point of intersection said equa distant line be found to represent the central thread of said river prior to the cutoff in July, 1867.

The Commissioners decline the last request for the reason that such request has not sufficient support in the testimony upon which to make a finding.

To which ruling on said requests the Complainant excepts and preserves herein his exceptions.

Your Commissioners further report that they return herewith all the testimony taken before them, and all the exhibits introduced by Complainant and Defendant in said cause.

Your Commissioners further suggest and recommend that should the Court find that the equa distant line between the original boundaries of Missouri and Nebraska as found by the surveyors of Nemaha county, Nebraska, and Atchison county, Missouri, to be established as the boundary line between Missouri and Nebraska, as shown by the exhibits heretofore referred to, that additional and permanent monuments should be established on said line every quarter of a mile thereon, so as to permanently mark the boundary line between said states.

All of which is respectfully submitted.

Dated this 12th day of December, 1902.

JOHN W. HALLIBURTON,
ALFRED HAZLETT,
Commissioners.

PLAINTIFF'S Ex. "D."

STATE OF MISSOURI—SS.

I, Samuel B. Cook, Secretary of State of the State of Missouri, hereby certify that the annexed pages contain full, true and complete copies of a memorial to the Congress of the United States as the same appears in the laws of the State of Missouri, passed at the first session of the Sixth General Assembly, begun and held at the City of Jefferson, the 15th day of November, in the year of our Lord, one thousand eight hundred and thirty; and a resolution of the said General Assembly directing the Secretary of State of Missouri to forward copies of memorials passed at said session to Senators and Representatives in Congress, approved January 15, 1831, as

appears by comparing the same with the laws, officially printed, now on file in the State Library; the original rolls of said laws having been destroyed by fire in the destruction of the capitod building in 1837.

IN TESTIMONY WHEREOF, I hereunto set my hand and affix the Great Seal of Missouri. Done (SEAL) at office in the City of Jefferson, this 18th day of October, A. D., 1902.

SAM B. COOK, Secretary of State.

By J. H. EDWARDS, Chief Clerk.

To the Honorable, the Congress of the United States of America:

The memorial of the General Assembly of Missouri, respcetfully shows, that many inconveniences have already arisen, and others are expected to arise from the improvident manner in which certain parts of the boundaries of this State have been designated. When this State Government was formed, the whole country on the west and north, was one continued wilderness, inhabited by none but savages, and but little known to the people or to the government of the United States. Its geography was unwritten, and none of our citizens possessed an accurate knowledge of its localities, except a few adventurous hunters and Indian traders. The western boundary of the State as indicated by the act of Congress of the sixth of March, eighteen hundred and twenty, and adopted by the Constitution of Missouri, is a "meridian line passing through the middle of the mouth of the Kansas river, where the same empties into the Missouri river," and extends from the parallel of latitude of 36 degrees and thirty minutes north, "to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines." The part of this line which lies north of the Missouri river, has never been surveyed and established, and consequently its precise position

and extent are unknown. It is believed, however, that it extends about one hundred miles north from the Missouri river, and almost parallel with the course of the stream, so as to leave between the line and the river a narrow strip of land, varying in breadth from fifteen to thirty miles. This small strip of land was acquired by the United States from the Kansas Indians, by the treaty of the third of June, eighteen hundred and twenty-five, and is now unappropriated and at the free disposal of the General Government.

Aware that is has been and now is the policy of the government, to remove the Indians yet remaining in the United States, to the country west of Missouri and Arkansas, we cannot suppress the expression of our fears, of the many and great calamities which may be brought upon this state, by crowding our frontier, already surrounded by restless hordes of native savages, with a mixed multitude of foreign Indians, amounting, as we are informed, to about one hundred thousand. The greater part of the country west of this state is destitute of wood and poorly supplied with water. The buffalo have disappeared before the white man, and have fled from the sound of the rifle; and such is the scarcity of game, that even the aboriginal tribes of that region, are annually thinned by famine. The government cannot be ignorant of their wretched condition, for the melancholy truth is forced upon the attention of the nation, by the public officers stationed on this frontier. The Superintendent of Indian affairs at St. Louis more than three years ago, in an official letter addressed to the Secretary of War, discloses a degree of suffering and misery among our Indian neighbors inconceivable to those who are ignorant of their improvident habits and precarious mode of life. He declares "that the living child is often buried with the dead mother, because no one can spare it as much food as would sustain it through its helpless infancy."

If such be the deplorable condition of the native tribes,

what horrors may we not anticipate when the frontier shall be surcharged with the jarring nations from the interior of the States. Without a system of judicious legislation and the constant interposition of the strong arm of the government, war will be the inevitable result. Already the official reports of the War Department manifest the inability of the Executive to preserve the peace of the frontier, without the intervention of Congress, and the necessity will soon become apparent to create a force more active and efficient than the ordinary material of the army, to protect the whites from the Indian and the Indians from each other.

If the Indian tribes alone were to suffer by this policy, we should leave them in their misery to the wisdom and humanity of Congress. But we too are involved in the evils of their lot. Our frontier inhabitants must suffer by their famine and will be forced to participate in their wars. If divided from us by an ideal line only, those who are beaten in war or are suffering from hunger, will fall back upon our settlements for safety and food. If these be denied them, or inadequately granted, the nation is at once in a state of war, for the vanquished will flee from death and it is idle to talk about the principles of law and the rights of property to starving men with arms in their hands. When our affairs shall arrive at this crisis we must destroy them or fall by their hands. All experience proves that men of such opposite habits and conditions cannot live in contact with each other in harmony and peace. Their discordant habits will conflict and irritate; the mingling of their horses and cattle in common pasture will produce continual quarrels. And the imprudence and the crimes of individuals will provoke the vengeance of communities already viewing each other with mutual fear and hatred. This picture, it is believed, will not be considered overcharged, but if the government in its wisdom to get rid of the great difficulty, connected with the existence of Indian tribes

within the boundaries of sovereign states, should think proper to place them on our borders, we call upon the General Government to adopt a system of defence for us commensurate with the danger.

These considerations seem to us sufficiently obvious to impress upon the public mind the necessity of interposing, whenever it is possible, some visible boundary and natural barrier between the Indians and the whites. The Missouri River, bending as it does, beyond our northern line, will afford the barrier against all the Indians on the southwest side of that river, by extending the north boundary of this State in a straight line westward, until it strikes the Missouri, so as to include within this State the small district of country between that line and the river, which we suppose is not more than sufficient to make two, or at the most three respectable counties.

Aside from the considerations connected with the peace and safety of the frontier, there are other and all sufficient reasons for this addition to the State. Our western line as it is now supposed to run, from the mouth of the Kansas, north, is about one hundred miles long, and the country is settled and is rapidly settling to its utmost verge. The Missouri is the only great highway of this region, and the only means of conveying its productions to market. Without this addition, those who may settle near the northwest corner of the State, will have an hundred miles of land carriage to the nearest point of their only great road to market, or will be compelled (in order to reach the nearest point of navigation) to pass for twenty or thirty miles through a savage, and perhaps a hostile country, a view of the map will prove this position.

The district of country in question, is represented to be as rich, as beautiful and as well adapted to all the purposes of agriculture as any in the west, and to abound in creeks and rivulets which afford excellent sites for all the mills and ma-

chinery which the densest population and the highest culture can require. While we consider that the incorporation of this slip of country with Missouri would produce a considerable addition to the revenue of the general government from the sale of the public land therein, and is necessary to the commerce of a large portion of the State, and to the peace and safety of the frontier, we do not hesitate to declare that it is in our opinion, inconvenient and unsuitable for the Indians. Its contact with the white settlements, with no barrier between, and its proximity to the Delaware Indians, who are located by the government on the opposite side of the river, forbid the hope of their subsistence by the chase; and the history of our country affords no example of a savage community forsaking at once their hereditary habits and settled prejudices to practice the arts and enjoy the comforts of civilized life.

In every view then, we consider it expedient that the district of country in question should be annexed to and incorporated with the State of Missouri; and to that end we respectfully ask the consent of Congress.

Your memorialists further represent that the northern boundary of this State, as indicated by the act of Congress of the sixth of March, eighteen hundred and twenty, and adopted by our Constitution, is the parallel of latitude which passed through the rapids of the river Des Moines extending on that line, from the northwest corner of the State "to the middle of the channel of the main fork of the said river Des Moines; thence down along the middle of the main channel of the said river Des Moines, to the north of the same, where it empties into the Mississippi River." This line is vague and indefinite. The country on the Des Moines is still unsettled and comparatively unknown, although the flood of migration now pouring into this State is rapidly tending to that border. We are not informed of the exact local position of the "Rapids of the River Des Moines," nor whether those rapids are occasioned

by a single obstruction of the stream, so as to indicate the precise position of the line, or are produced by a succession of shoals, extending like the rapids of the Mississippi for many miles. And if, on examination, it should be found that the course of the Des Moines, like that of the Mississippi, is disturbed by different rapids with long intervals of a smooth current between them, it may well be doubted which of the rapids shall indicate our northern boundary. And we consider it highly important that the line in question should be definitely settled and distinctly known before the white settlements now rapidly spreading, shall reach the border, and before the possibility of a conflict with the Indian tribes, which we have reason to apprehend, may be removed to that frontier. And to that end, we respectfully request that Congress will take such measures as to their wisdom and justice shall seem most proper.

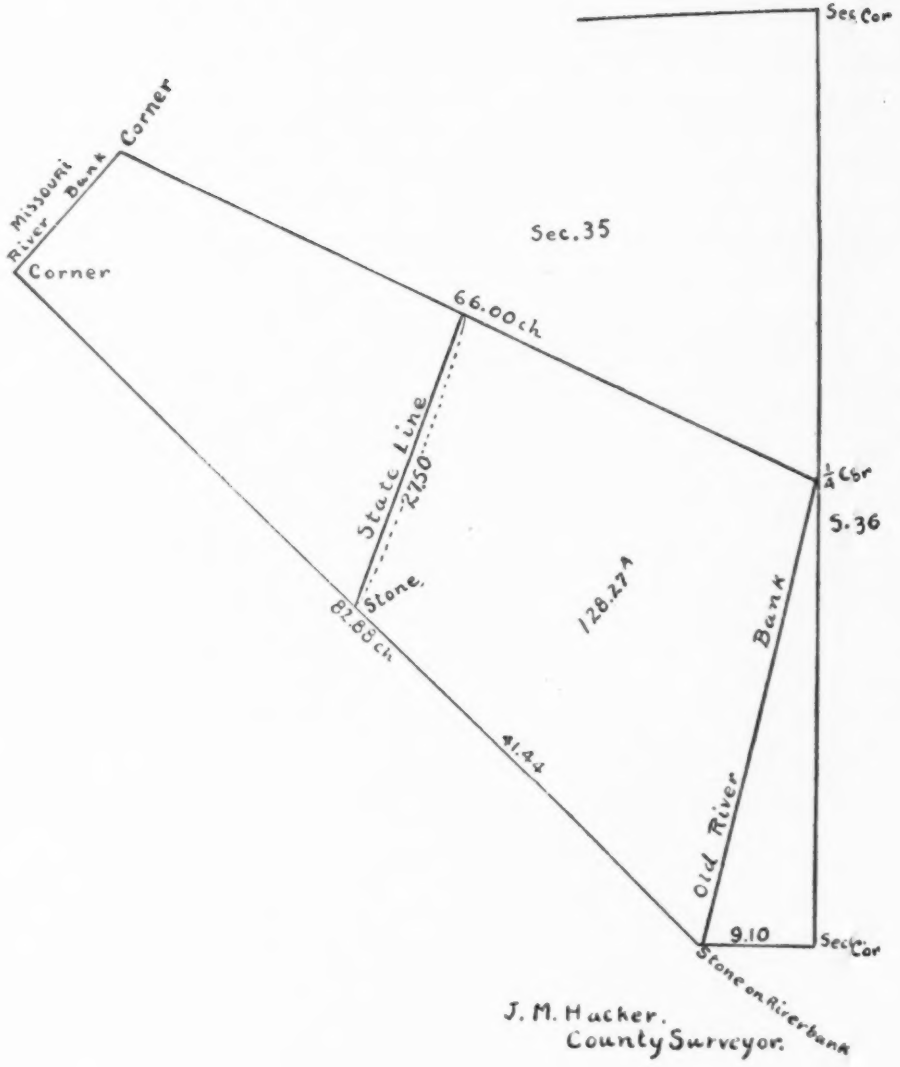
Your memorialists further represent, that the small tract of country lying immediately in the fork of the Mississippi and Des Moines rivers, and extending to the northern boundary of this State, when produced in the right line, through the Des Moines to the Mississippi, has been ceded to the United States by the Suac and Fox Indians, by the treaty of the fourth of August, eighteen hundred and twenty-four, and is now held by the United States, for the use and benefit of the half blood descendants of those tribes. It has ceased to be Indian land, and is held by the nation for the use of individuals only, some of whom have been reared among us, and are as civilized and as well instructed as any of our citizens. The tract is small, being an acute angle between the rivers, and extending according to the common belief, about thirty miles from south to north. Considered in reference to its area only, it is of little moment either to this State or to the nation; but there are many considerations which give to it importance and value. It is a wedge in the corner of the State,

disfiguring the form and destroying the compactness of our territory. The title is vested in the United States and the usufruct belongs to a class of individuals who are incapable of establishing a separate government for themselves, and can never be acknowledged as a State or Nation. It borders upon the Mississippi for the greater part, perhaps the whole extent of the lower rapids of that river, and thus embraces a spot, which, in future times, will be of immense importance to the commerce and the intercourse of the whole western valley. Your memorialists anticipate the day when the obstruction to navigation will be overcome by a canal around those rapids; when the inexhaustible power of that mighty stream will be applied to almost every variety of manufacturing machinery; and when a commercial city will spring up in that wilderness, to serve as the great entrepot of the upper and lower Mississippi.

With these views of the present condition and future importance of that little section of country, and seeing the impossibility of conveniently attaching it now or hereafter to any other state, your memorialists consider it highly desirable, and indeed necessary, that it should be annexed to and form a part of the State of Missouri. And to the accomplishment of that desirable end, we respectfully request the assent of Congress.

Resolved, by the Senate and House of Representatives, That it be made the duty of the Secretary of State to forward to each of our Senators and Representatives in Congress, one copy of each of the memorials that have been, or may be, passed at the present session of the General Assembly, immediately after the approval of the same by the Governor.

Approved January 15, 1831.



J. M. Hacker.
County Surveyor.

(No. 1.)

Defendant's Ex. "E."

FIELD NOTES.

No. of Survey .....; date, February 25th to March 29th, 1895.

Survey for Nemaha county, Nebraska.

At request of the Board of County Commissioners.

Chainmen sworn, W. T. Hacker and H. D. Hacker.

Point established divis. of accretions to sec. 35, Twp. 7 N., Rng. 15 E. 6th P. M.

Commencing at the meander corner, on the Nebraska bank of the old Missouri river bed where the township line between townships 6 and 7 north of range 15 east of the 6th principal meridian in Nebraska intersects with the old Missouri river bed and at a point 9.10 chains west of the southeast corner of section 35, and southwest corner of section 36 in township 7 north, of range 15 east of the 6th principal meridian in Nebraska, and run thence N. 47° W. at 40.00 chaines, set a random stake for half way and at 82.88 chaines, came to a meander corner on the Missouri bank of the old Missouri river bed. This line run in connection with D. A. Quick, surveyor of Atchison county Missouri. Correcting back, we corrected the random stake set at 40.00 chaines to 41.44 chaines for the half way or dividing line between Missouri and Nebraska, and set a limestone 7x12x25 inches square. Markes, M. and N. Whole distance across, 82.88 chaines. Half the distance across 41.44 chaines.

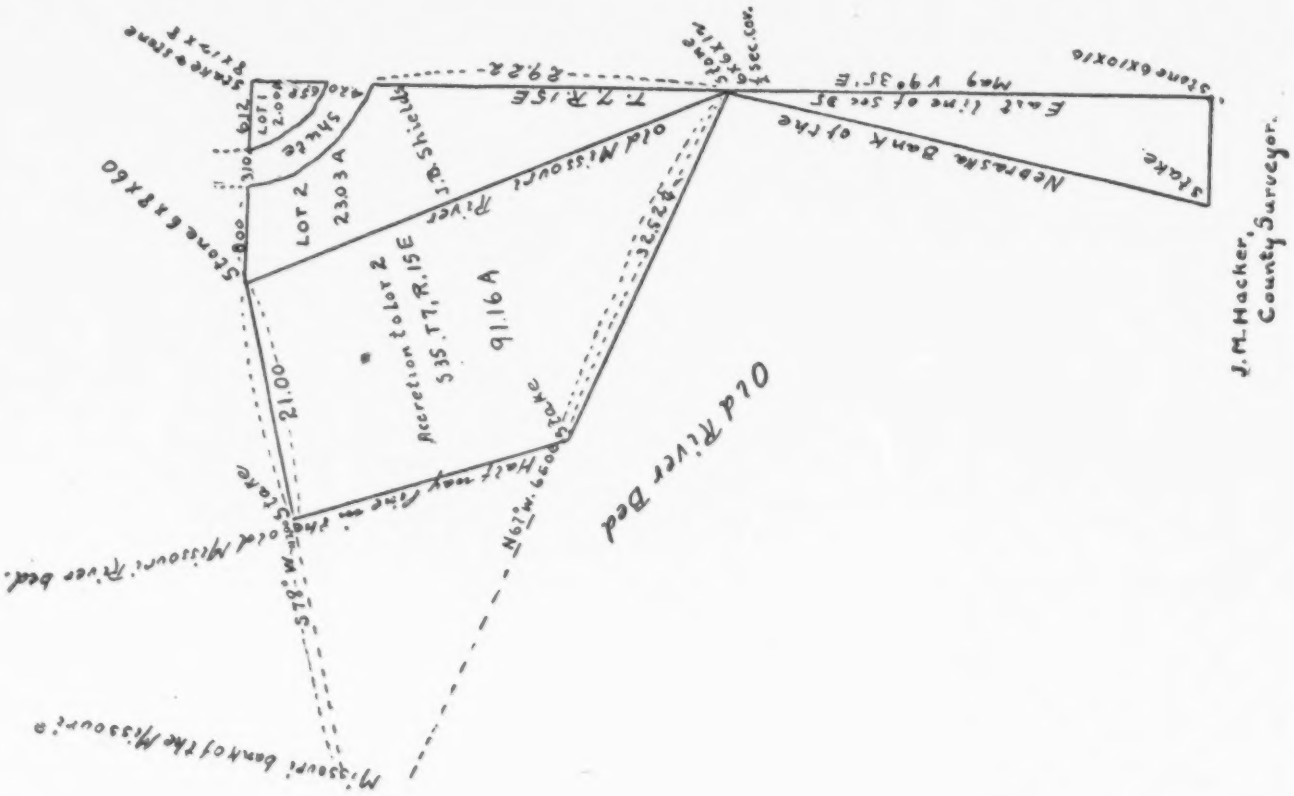
And commencing at the quarter section corner on the west line of section 36, and east line of section 35, in township 7 north, of range 15 east of the 6th principal meridian in Nebraska, it being on the Nebraska bank of the old Missouri river bed, and run thence N. 67° W. and at 32.52 chaines set a random stake for half way and at 66.00 chaines came out 88 links south of the corner on the Missouri bank of the old Missouri river bed. This line was run in connection with D. A. Quick, county surveyor of Atchison county, Missouri.

(No. 1.)

Adjusting our bearing to N. 66° 15′ W. we corrected back and corrected the random stake at 32.52 chaines to 33.00 chaines 48 links west, and 44 links north of the random stake, and on a direct line, and we set a limestone 8x11x44 inches square for the dividing line between Missouri and Nebraska, marked M. and N.

Whole distance across 66.00 chaines.

Half the distance across 33.00 chaines.


Stone 6x8x12
Stone 6x8x12
Stone 6x8x12

(No. 2.)

SURVEYOR'S RECORD.

FIELD NOTES.

No. of Survey, ...; date, May 15th to 20th, 1890.

Survey for J. B. Shields.

At request of J. B. Shields.

Chainmen sworn, Marton Lamb and W. Barrenger.

Point established corners to lots 1 and 2 etc., sec. 35, Twp. 7, Rng. 15, E. 6th P. M.

Commenced at the northeast corner of section 35, T. 7 N., of R. 15 E., and run thence south and at 6.58 chaines came to north bank of old River Shute the S. E. cor. of lot 1, in sec. 35, and at 4.20 chaines on south bank of old River Shoot at the N. E. cor of lot 2 in sec. 35, and at 40.00 chaines set a stone 6x6x12 inches square for the quarter sec. corner on the east line of sec. 35, the S. E. cor. of lot 2 in sec. 35. And at 80.00 chaines set a stone 6x10x16 inches square, for southeast corner of sec. 35, T. 7, R. 15 E. Nemaha county, Nebraska. Then commencing at the northeast corner of sec. 35, T. 7, R. 15 E., and running thence west 6.12 chaines to the east bank of old River Shoot, the N. W. cor. of lot 1, in sec. 35. Thence west 3.10 chaines to the west bank of old River Shoot the N. E. corner of lot 2 in sec. 35, thence west 8.00 chaines to the old bank of the Missouri river, set a stone 6x8x10 inches square for the N. W. cor. of lot 2, in sec. 35, and for the bank of the old Missouri river in Nebraska.

Survey of the accretion to lot 2, in sec. 35, T. 7, R. 15 E. in Nebraska.

Commencing at a stone 6x8x10 inches square, set for the N. W. cor. of lot 2, in sec. 35, T. 7, R. 15 E. the Nebraska bank of the old Missouri river bed, and running thence south 78° 30' W. 42.00 chaines to the opposite bank of the old Missouri river bed in Missouri, as designated by B. E. Rummerfield, county surveyor of Atchison county, Missouri. Then correcting and setting a stake 3 inches square at the half way point, and for the N. W cor. of the accretion to lot 2 in sec.

(No. 2.)

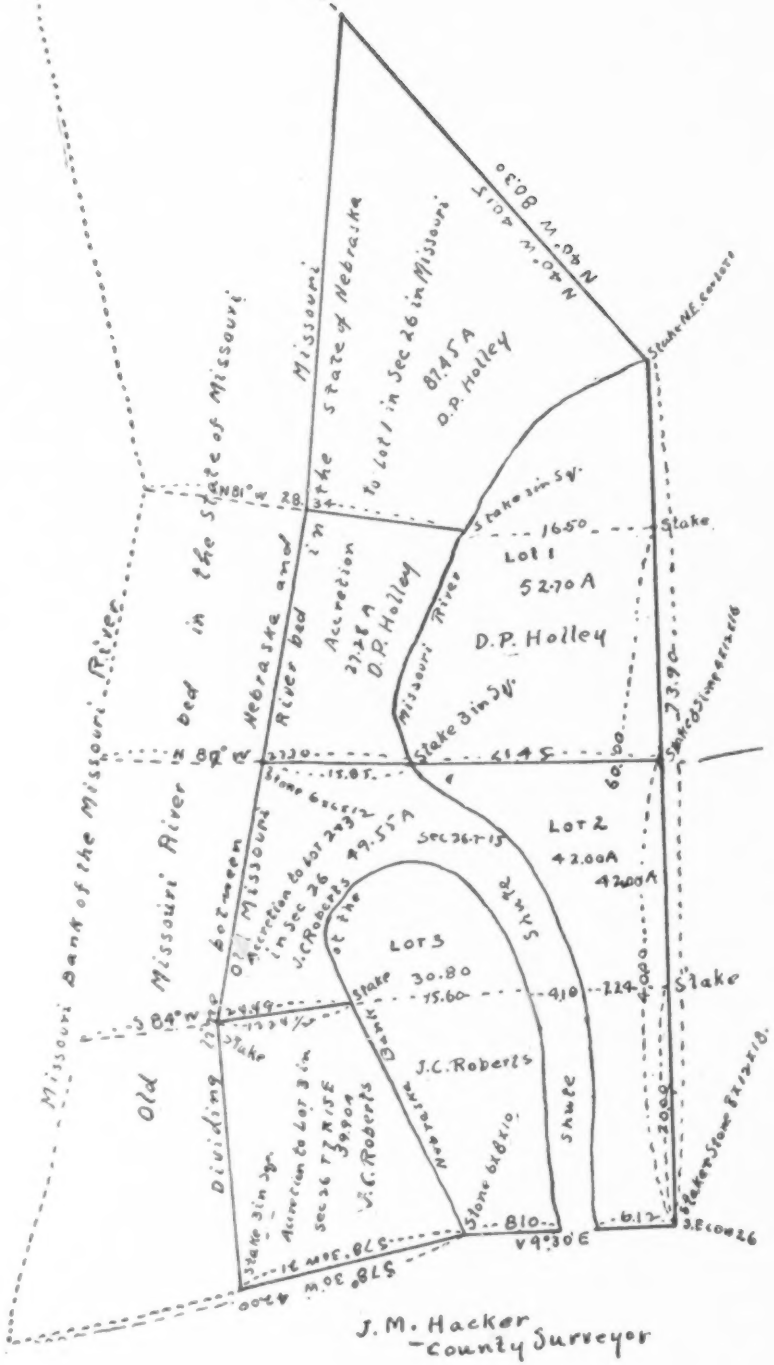
35, T. 7, R. 15, E. in Nemaha co., Neb. Said stake witnessed by a cottonwood tree 9 inches in diameter, beares N. 49° 30′ W. 24 links distant. And by a cottonwood tree 11 inches in diameter beares N. 19 E. 32 links distant.

Then commencing at quarter section corner stone on the bank of the Missouri river bed in Nebraska. Running thence N. 67° W. 65 05 chaines to the opposite bank of the old Missouri river bed on the Missouri State side of the old river bed. Then correcting and setting a stake and stone at 32.52½ chaines for the half way line, and the southwest corner of the accretions to lot 2 in sec. 35, town. 7, range 15 east in Nemaha county, Nebraska.

No 3

PLAT

Section 26 Township 7, Rang 15 East 6th P.M.


Missouri
State of Nebraska
Missouri River
Nebraska and
River bed in the State of Missouri
Missouri River
Bank of the Missouri River
Old Missouri River between
Old Dividing Line
Accretion to Lot 1 in Sec 26 in Missouri
87.45 A
D.P. Holley
Accretion
27.28 A
D.P. Holley
Lot 1
52.70 A
D.P. Holley
Lot 2
42.00A
42.00A
Lot 3
49.55 A
Sec 26-T-15
Accretion to Lot 2 in Sec 26
J.C. Roberts
Lot 3
30.80
75.60
J.C. Roberts
Accretion to Lot 3 in Sec 26 T7N R15E
J.C. Roberts
Stake
Stake 3in SW
Stake
Stake
Stake

(No. 3.)

SURVEYOR'S RECORD.

FIELD NOTES.

No. of Survey, ...; date, May 13th to 20th, 1890.

Survey for D. P. Holley and J. C. Roberts.

At request of D. P. Holley and J. C. Roberts.

Chainmen sworn, Marton Lamb and W. Barrenger.

Point established lots 1, 2 and 3, in sec. 26, Twp. 7, Rng. 15 E. 6th P. M.

Commencing at the S. E. cor. of sec. 26, T. 7, R. 15 E. in Nemaha county, Nebraska, and running thence north, at 20.00 chaines set a stake for east line of lot 2, in sec. 26, at 40.00 chaines found quarter section corner post at S. E. cor., lot 1 and N. E. cor. of lot 2, set by the government, at 60.00 chaines, set stake for east line of lot 1 and at 73.90 chaines set a stake for N. E. cor., of lot 1, and at bank of Missouri river in Nebraska. And from this line as a base, we run lines west to find the old Missouri river bank on the Nebraska side, by first commencing at the stake set at the 60.00 chaines north of S. E. cor. of sec. 26, running thence west 16.50 chaines for bank of river setting a stake 3 inches square. Thence commencing at the quarter section corner on the east line of sec. 26, and running thence west 21.45 chaines setting stake 3 inches square for S. W. cor. of lot 1, in sec. 26, and N. W. cor. to lot 2, in sec. 26, which contains by government survey, 52.70 acres.

Then commencing at the stake 20.00 chaines north of the S. E. cor. of sec. 26, and on the east line of lot 2, in sec. 26, and running thence west at 7.24 chaines, came to east bank of the river Shute, the west line of lot 2, sec. 26, then at 11.34 chaines came to the west bank of the River Shute the east line of lot 3 in sec. 26. Thence at 26.84 chaines set a stake for a River bank, and for the west line of lot 3, in sec. 26.

Then commencing at the S. E. corner of sec. 26, T. 7, R. 15 E. in Nebraska, running thence west and at 6.12 ch. came

to the east bank of the River Shute, and the S. W. cor. of lot 2, in sec. 26, lot 2 contains 42.00 acres, and at 9.22 chaines came to west bank of the river Shute, and the S. E. corner of lot 3 in sec. 26, and at 17.22 chaines set a stone 6x8x10 in., sqr. for S. W. cor. of lot 3 on Old River line in sec. 26, T. 7, R. 15 E. Lot 3 contains 30.80 acres per government survey.

Survey of accretions in sec. 26, T. 4. R. 15 E. in old River bed dividing the accretions between lots 1, 2 and 3 in sec. 26, T. 7, R. 15 E., and dividing between Nebraska and Missouri, and between the parties above named. Then commencing at a stone 6x8x10 inches square set for meander line and at S. E. cor. of accretions to lot 3, in sec. 26. And running thence S. 73° 30′ west 42 chaines to the opposite meander bank of Missouri River in Missouri, as designated by B. F. Rummerfield, County Surveyor of Atchison County, Missouri. Then correcting back at 21.00 ch. set stake 3 inches sqr. for division line and at the S. W. cor. of accretions to lot 3 in sec. 26. The stake witnessed by a cottonwood tree 9 inches in diameter, beares N. 49° 30′ W. 24 lks. distant, and by a cottonwood 11 inches in diameter, beares N. 19 E. 32 lks. distant.

Then commencing at the stake for the west line of lot 3 in sec. 26, for the old River bank running thence S. 84° W. 24.49 chaines to the opposite bank of the old Missouri River in Missouri, as designated by B. F. Rummerfield, County Surveyor of Atchison Co., Mo. Then at 12.24½ chaines set a stake for division line on the west line of lot 3, sec. 26, T. 7, R. 15 E. between Missouri and Nebraska.

Then commencing at stake 3 inches square set for N. W. cor. of lot 2, and the S. W. cor. of lot 1, in sec. 26, and running thence No. 87° W. 27.70 chaines to opposite meander line of the Missouri River, in Missouri. Then at 13.85 chaines half way set a stone 6x6x12 inches square for S. W. cor. of accretions to lot 1, and N. W. cor. of accretions to lot 2 in sec. 26, T. 7, R. 15 E. in Nebraska.

(No. 3.)

Then commencing at a stake 3 inches square set for the meander line of the old Missouri River on the west line of lot 1 in sec. 26, T. 7, R. 15 E. in Nebraska. Running thence N. 81° W. 28.34 chaines to the meander line on the Missouri side of the old Missouri River bed. Then setting a stake at 14.17 chaines for half way dividing line between Nebraska and Missouri.

Then commencing at a stake at the N. E. corner of lot 1 in sec. 26, T. 7, R. 15 E., and at the intersection of the east line of sec. 26, with the Missouri River in Nemaha County, Nebraska. And running thence N. 40° W. 80.30 chaines to the meander line on the Atchison County, Missouri side of the old Missouri River.

Then correcting and setting at 40.15 chaines the half way dividing point between Missouri and Nebraska, a limestone 3x12x18 inches square, for the N. W. cor. of the accretions in Missouri River belonging to lot 1 in sec. 26, Nemaha Co., Neb. Witnessed by a cottonwood tree 5 inches in diameter, beares East 6½ lks. distant. And by a white willow tree 5 inches in diameter, beares West 5° S. 9½ links distant.

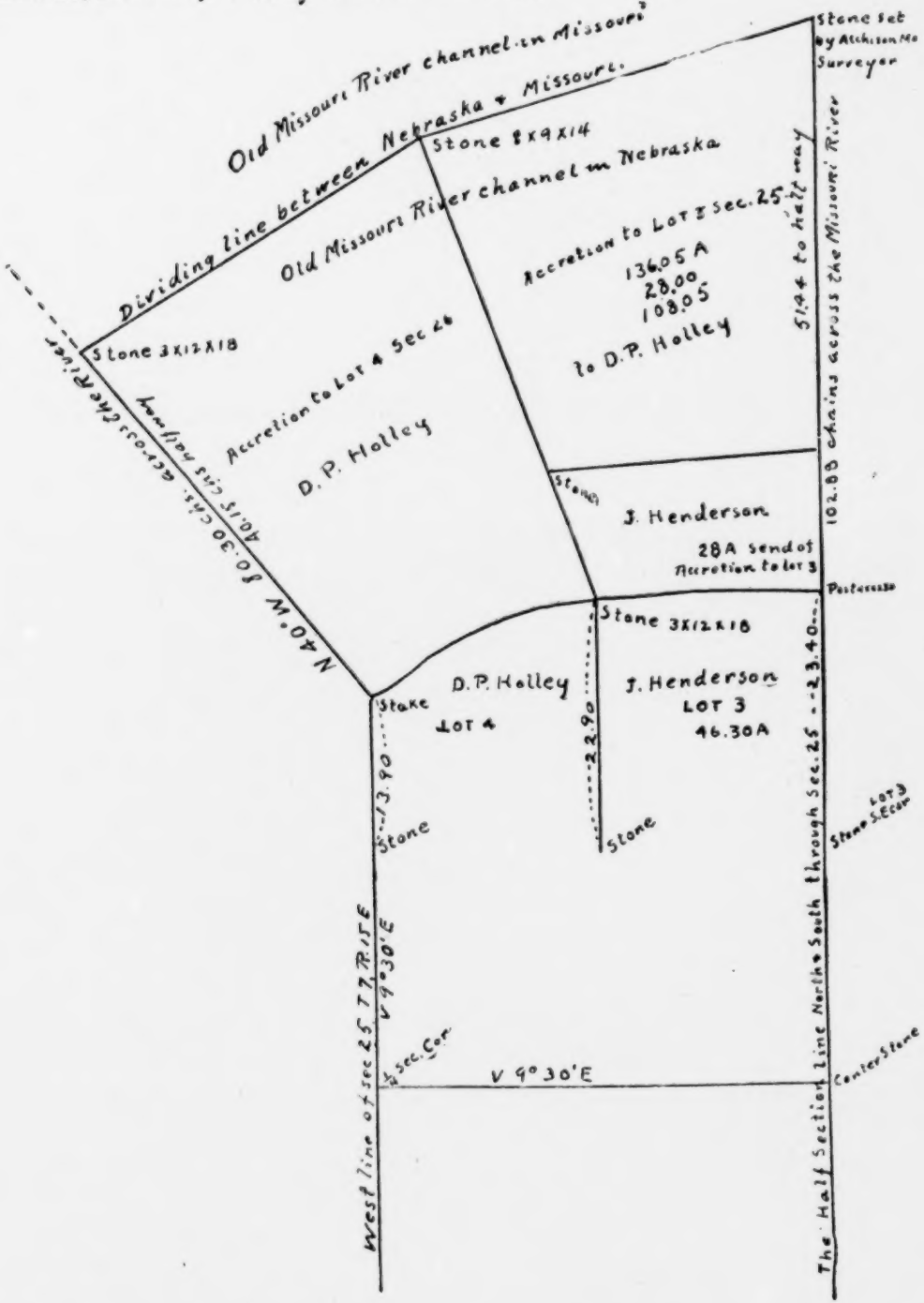
This survey made in connection with B. F. Rummerfield, County Surveyor of Atchison County, Missouri.

Magnetic V. 9° 30′ East.

No 4

PLAT.

Section 25, Township 7. Range 15 East 6th P. M.



J.M. Hacker.
County Surveyor.

(No. 4.)

SURVEYOR'S RECORD.

FIELD NOTES.

No. of Survey, ...; date, May 16th to 20th, 1890.

Survey for D. P. Holley and J. Henderson.

At request of D. P. Holley and J. Henderson.

Chainmen sworn, Marton Lamb and W. Barrenger.

Point established accretions to lots 3 and 4, Sec. 25, Twp. 7, Rng. 15, E. 6th P. M.

Commenced the survey of the accretions to lots 3 and 4 of sec. 25, twp. 7, north, of range 15 east, by commencing at the meander corner, at intersection of the half section line, running north and south through section twenty-five, town. seven range fifteen east, with the Missouri River and at the northeast corner of lot No. 3, marked by a bur Oak stake 4x4x36 inches square, and by a piece of an iron bar drove in by the side of the stake.

Running thence north 102.88 chaines to the meander line on the opposite bank of the Missouri River as designated by B. F. Rummerfield, County Surveyor of Atchison County, Missouri.

Then correcting back making corner on dividing line between Nebraska and Missouri at 51.44 chaines at a stone set by the Atchison County Missouri Surveyor and Chainmen. And at 12.70 chaines north of the meander corner at the northeast corner of lot No. 3, in sec. 25, set a stone for the northeast corner of twenty-eight acres off of the south end of the accretions to lot no. 3, of sec. 25. Then commencing at the northwest corner of lot 3, sec. 25 running thence N. 20° W. 89.43 chaines to meander line on opposite bank of the Missouri River in Atchison County, Missouri, as designated by the County Surveyor of Atchison County, Missouri, B. E. Rummerfield. Then correcting back and setting a limestone 8x9x14 inches square at 44.71½ ch. for the northwest corner of accretions to lot No. 3 in sec. 25, T. 7, R. 15 East, in Nebraska, and on

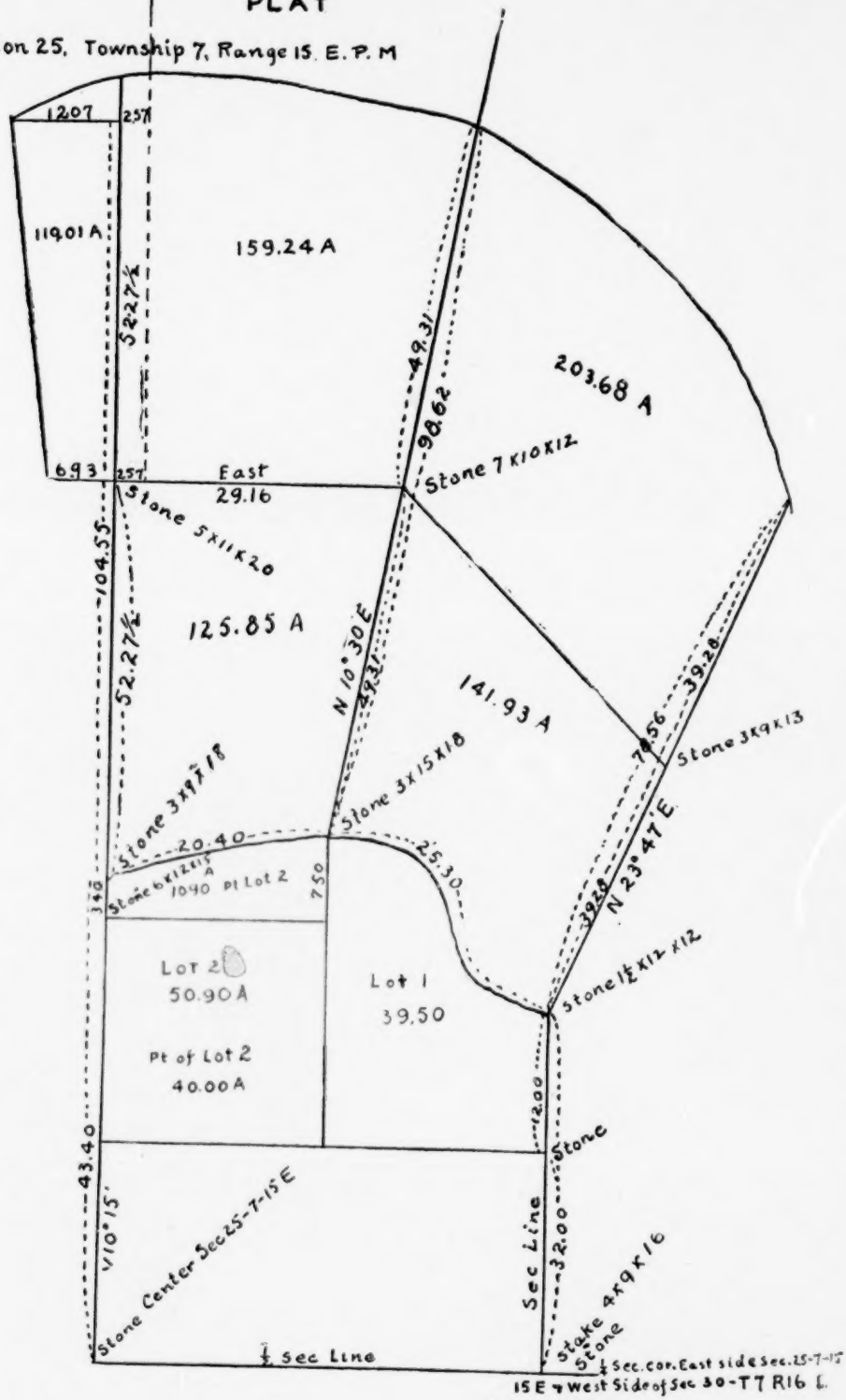
the dividing line between Nebraska and Missouri. Said stone is witnessed by a willow tree, 9 inches in diameter, bears N. 63° 30′ W. 54 lks. distant. And setting a stone 12.70 ch. north, of northwest corner lot 3, S. 25, for northwest corner of 28.00 acres off of south end of accretions in Missouri river to lot No. 3, sec. 25, T. 7, R. 15 E.

Then commencing at the intersection of the west line of section 25, town. 7 north of range 15 East, with the Missouri River in Nebraska, at the meander corner at the northwest corner of lot no. 4, in sec. 25, running thence north 40° W. 80.30 chaines to the meander line of the opposite bank of the Missouri River in Missouri, as designated by the County Surveyor of Atchison County, Missouri, B. F. Rummerfield. Then correcting back and at 40.15 chaines, the half way point, set a limestone 3x12x18 inches square. Witnesses, by a cottonwood tree 5 inches in diameter, beares east 6½ links distant. And also by a white willow tree 5 inches in diameter, beares W. 5° south, 9½ links distant. This stone marks the northwest corner of the accretion in the Missouri River to lot Number four, in section 25, town. 7 north of range 15 east, in Nebraska, Nemaha County.

N°5

PLAT

Section 25, Township 7, Range 15 E. P. M



¼ Sec. Cor. East side Sec. 25-7-15 E & West Side of Sec 30-7 7 R16 E.

J. M. Hacker,
County Surveyor.

(No. 5.)

SURVEYOR'S RECORD.

FIELD NOTES.

No. of survey .....; date, December 8th to 23d, 1891.

Survey for the Lombard Investment Co.

At request of J. H. Stewart, 512 Exchange Building, Kansas City, Missouri.

Chainmen sworn, Henry C. Taylor and Robert Taylor.

Point established accretions to lots 1 and 2, sec. 25, twp. 7, rng. 15 E. 6th p. m.

Began the survey by commencing at the quarter section corner on the east line of section 25, town 7 range 15 east where we found the old government stake standing and for the purpose of preserving the corner we set a limestone 4x9x16 inches square, marked ¼, in the ground by the side of the old stake—Running from thence north to find the meander corner at the northeast corner of lot no. 1, in sec. 25, and at 20.00 chaines found a stone heretofore set at the southeast corner of lot 1, and at 32.00 chaines set a random stake for the meander corner on the bank of the old Missouri River, and at the northeast corner of lot no. 1.

Then commencing at a stone set for the center of sec. 25, Town. 7, Range 15 east, and at 20.00 chaines found a stake heretofore set and at 40.00 chaines found an iron bar heretofore set the northwest corner of 40 acres off of the south end of lot 2, in sec. 25, and set a limestone 6x12x15 inches square in by the side of the iron bar, and at 43.40 chaines found an oak post heretofore set for the meander corner at the northeast corner of lot 3, in section 25, town. 27, range 15, and by the side of the oak post we set a limestone 3x9x18 inches square for the northwest meander cor. of lot 2, in section 25-7-15 E. Witnessed by a sycamore tree 12 inches in diameter, beares S. 75° 30′ W. 44 links distant. And by a sycamore tree ten inches in diameter. Beares S. 35° E. 53 lks. distant. x And also witnessed by a cottonwood tree 20 inches in diameter,

beares North 31° 30′ W. 69 lks. distant. xx Then commencing at a stone heretofore set for the northeast corner of 40 acres off of the south end of lot 2, in s., 25 and run thence north 7.50 chaines, and set a random stake for the northeast meander corner to lots 1 and 2, in sec. 25. Then after testing the meander random stake set at the northeast corners of lots 1 and 2, of sec. 25-7-15 E. At the northeast meander corner of lot 1, we set a blue limestone 1½x12x12 inches square. Witnessed by a cottonwood tree 13 inches in diameter, beares No. 63° west, 16 lks. distant, and by a sycamore tree 9 inches in diameter, beares N. 61° 30′ E. 53 lks. distant. And at the northeast meander corner of lot 2, and northwest corner of lot 1, we set a blue limestone, 3x15x18 inches square. Witnessed by a cluster of willows, beares S. 57° 30′ W. 33 lks. distant.xx Then commencing at the northwest corner of lot 2, in sec. 25-7-15 East and run thence north at 52.00 chaines, set a random stake for half way point across the old Missouri River bed, at 104.55 chaines came to the north bank of the old Missouri River bed, 2.57 chaines west of a meander stake at the intersection of a section line with the river, set by Rummerfield, making a jog of 2.57 chaines between ½ sec. and section lines in the different states.xx Then correcting back, and at 27½ lks. north of the random stake, set at 52.00 chaines. Setting a limestone 5x11x20 inches square for the northwest corner of the accretions in the old Missouri River bed to lot 2 in sec. 25, town 7, range fifteen east.x

Then commencing at the northeast corner of lot 2 and the northwest corner of lot 1, in sec. 25, running thence north 10° 30′ E. at 50.00 chaines set a random stake for ½ way and at 98.62 chaines came to a stone at meander corner on the north bank of Missouri River set by Rummerfield, for north bank of river.xx Then correcting back at 49.31 chaines the half way point from northeast corner of lot 2, in sec. 25-7-15 E. on the south bank of old Missouri River, to the meander cor-

ner on the opposite bank of the old Missouri River to a stone by Rummerfield, for meander corner on old Missouri bank in the state of Missouri. Setting a limestone 7x10x12 inches square at the northeast corner of accretion to lot 2 in sec. 25-7-15 in Nebraska. And northwest corner of lot 1 in sec. 25.

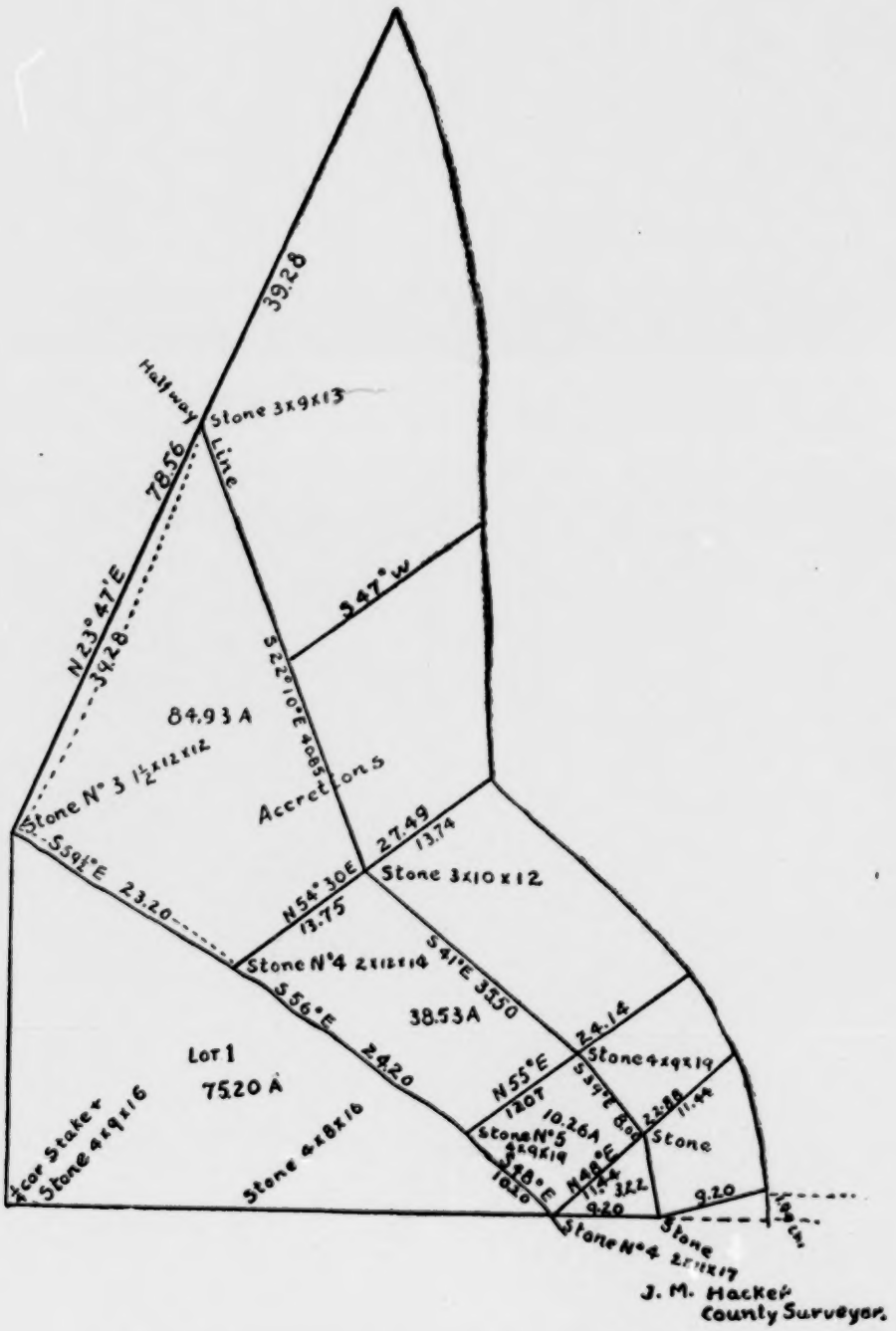
Then commencing at the northeast corner of lot 1, in sec. 25-7-15 East Nebraska, running thence N. 23° 47′ E. at 40.00 chaines set a random stake and at 78.56 chaines came to meander corner set by Rummerfield for north bank of old Missouri River.x Then correcting back and correcting random stake set at 40.00 chaines by setting a limestone 3x9x13 inches square at 39.28 chaines, the half way point. Being the northeast corner of the accretion to lot 1, in sec. 25, town 7, range 15 E. on the state line. The stone witnessed by a cottonwood tree 6 inches in diameter. Beares N. 37° E. 70 links distant.

This survey made in connection with B. F. Rummerfield, County Surveyor of Atchison County, Missouri.

No 6

PLAT.

Section 30 Township 7 Range 16 East of 6th P.M. Neb



(No. 6.)

FIELD NOTES.

No. of survey .....; date, December 8th to 23rd, 1891.

Survey for the Lombard Investment Co.

At request of J. H. Stewart.

Chainmen sworn, Henry C. Taylor and Robert Taylor.

Point established accretion to lot 1, sec. 30, twp. 7, rng. 16 E. 6th p. m.

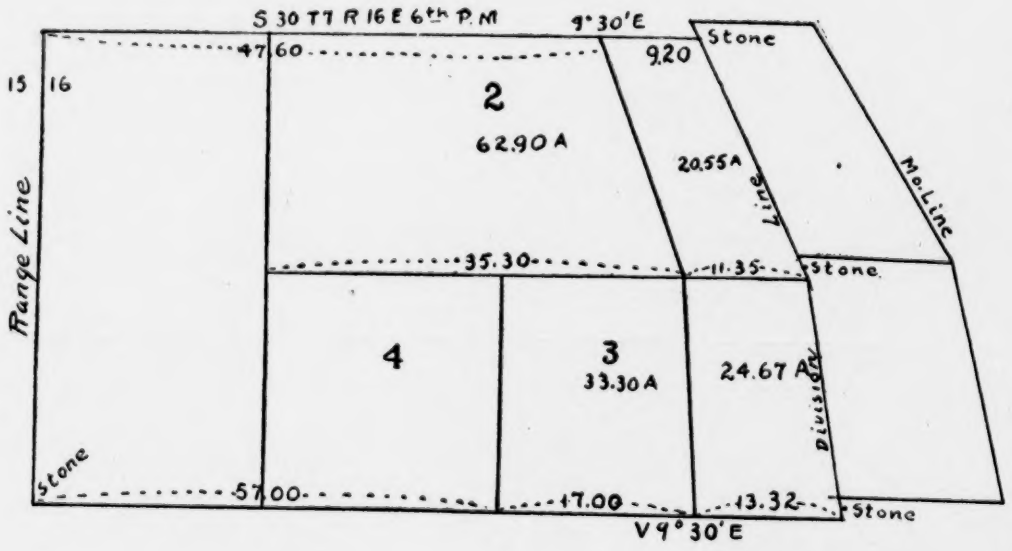
Commencing at quarter section corner on the west line of sec. 30, town. 7 north, of range 16 east. (By the side of the stake set by the government surveyors I set a limestone 4x9x16 to preserve and perpetuate the quarter section corner on the west line of sec. 30 Town. 7, range 16 east.) And run hence east on the half section line at 20.00 chaines set a stake, at 40.00 chaines set a random stake and at 47.60 chaines set random stake for the meander corner on the bank of the old Missouri River bed and the southeast corner of lot 1, in section 30, town 7, range 16 east. At the southeast corner of lot 1, in sec. 30, town. 7, range 16 east set a limestone 2x11x17 inches square for meander corner on the old Missouri River bed. Then correcting back on half section line, and at 20.00 chaines set a limestone 4x8x16 inches square. Witnessed by a white elm tree 21 inches in diameter. Beares No. 49½° E. 17½ lks. distant. Then commencing at the meander corner stone, set at the northeast corner of lot 1, in sec. 25, town 7, range 15 east, and also the northwest corner of lot 1, in sec. 30, town. 7, range 16 E. (See page 156 for size of stone and witness tree) running thence S. 59° 30′ E. 23.10 chaines for meander corner, set a limestone 2x12x14 inches square for meander corner on river bank. Witnessed by a cottonwood tree 14 inches in diameter. Beares S. 54° 30′ E. 1.47 inches distant. Then run S. 55 E. 24.33 chaines for meander corner on bank of old Missouri River bed, and set a limestone 4x9x19 for meander corner.

(No. 6.)

Then commencing at the meander corner at the northwest corner of lot 1, sec. 30, town. 7, range 16 east, and run thence north 23° 47′ east for the meander corner on the opposite side of the old Missouri River for the purpose of dividing the accretions and obtaining the amount belonging to lot 1, sec. 30, town. 7, range 16 east, at 40.00 chaines set a random stake for half way, at 78.56 chaines came to the meander corner stone set by Rummerfield on meander river line.x Then correcting back at half way random stake corrected and at 39.29 chaines, half way, set a limestone 3x9x13 inches square. Witnessed by a cottonwood tree 6 inches in diameter N. 37° E. 70 links distant. Then commencing at meander corner stone No. 4, and run N. 54° 30′ E. at 12.00 chaines set a random stake at 27.49 chaines came to random corner set by Rummerfield at southeast corner lot 1 sec. 9, town 66, range 42 west in Missouri. Then correcting back at half way at 13.75 chaines, set a stone 3x10x13 inches square. Witnessed by a cottonwood tree 6 inches in diameter. Beares S. 14° 30′ E. 67 links distant.

Then commencing at meander corner stone No. 5, and run N. 55° E. at 10.00 chaines, set a random stake for half way at 24.14 chaines, came to random corner set by Rummerfield. Then correcting back at 12.07 chaines set a stone for the northeast corner of part of accretions to lot 1, in sec. 30-7-16 E. 12.07 chaines No. 55° E. from a limestone 4x9x19 inches square on meander bank of the old Missouri River on north line of lot 1 section 30, town. 7, range 16 east. Then commencing at a stone 2x11x17 inches square set at southeast meander corner of lot No. 1, sec. 30-7-16 East, and run N. 48° E. at 10.00 chaines set a random stake for half way across the old river bed and at 22.88 chaines found it to be the distance across the river. Then correcting back moved random stake at 10.00 chaines by setting a stone at 11.44 chaines for the northeast corner of accretions to lot 1, sec. 30-7-16 E.xx Then from the 2x11x17 inches square set for the southeast corner of lot 1,

sec. 30-7-16 E. run east at 9.20 chaines, set a stone for half way across the old bed of the Missouri River, and at 12.28 chaines set a random stake on the East bank of the Nishney-boteny River, which river is in the old Missouri river bed, 4.12 chaines west of the east bank of the old Missouri River bed.xxx At which point the half way section line running east and west through sec. 30, town. 7, range 16 east in Nebraska, jogs south 1.94 chaines of an 80 rod line running east and west through the section opposite and in Missouri state, and 80 rods north of the south line of said section in Missouri.



J. M. Hacker
County Surveyor.

(No. 7.)

FIELD NOTES.

No. of Survey .....; date, from February 25th to March 29, 1895.

Survey for Nemaha County, Nebraska.

At request of the Board of County Commissioners.

Chainmen sworn, W. T. Hacker and H. D. Hacker.

Point established division accretions in old River, sec. 30, twp. 7 north, rng. 16 east 6th p. m., Nebraska.

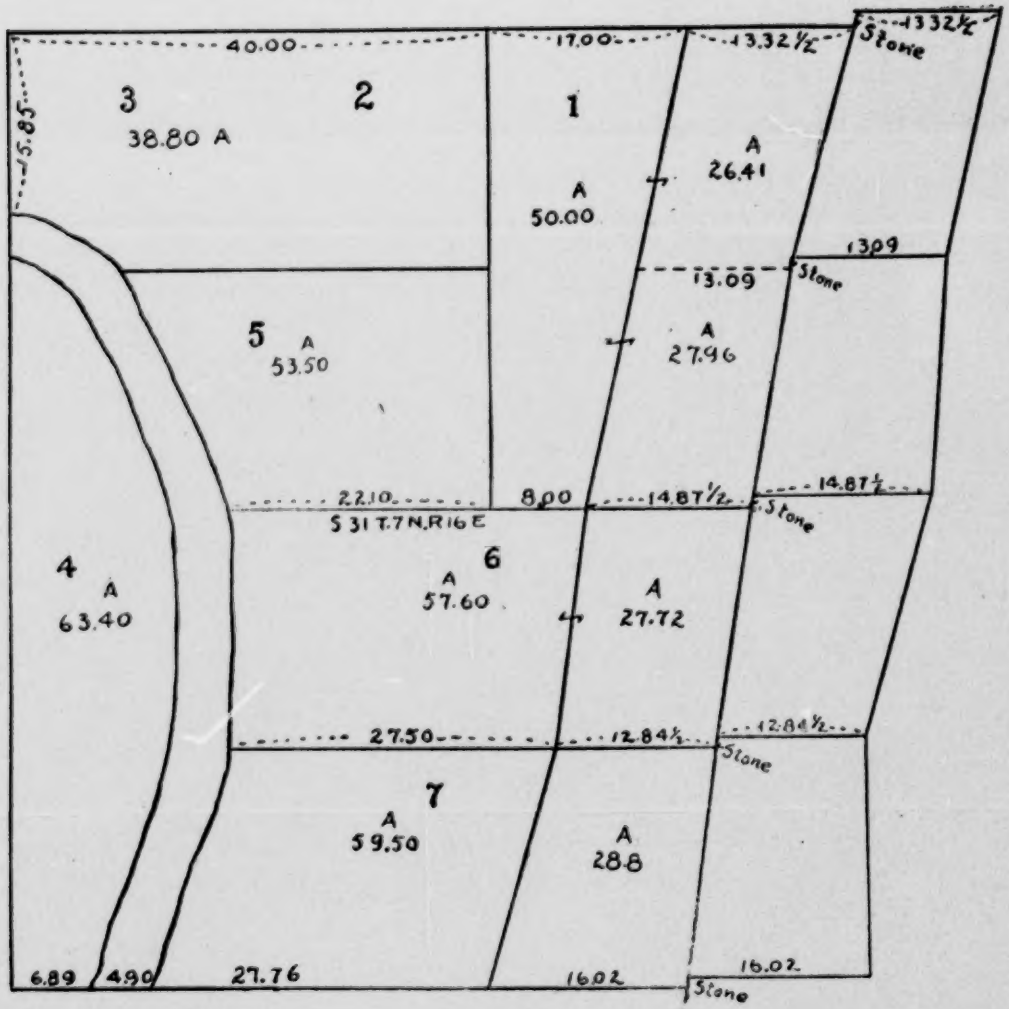
Commencing at the meander corner on the Nebraska bank of the old Missouri River bed at the intersection of the south line of s. 30, t. 7n., r. 16 east 6th p. m., in Nebraska, with the old Missouri River bed, it being the southeast corner of lot 3, in sec. 30, and the northeast corner of lot 1, in sec. 31. And run east to meet D. A. Quick, surveyor of Atchison County, Missouri. Running from the Missouri side of the old Missouri River bed on a division of accretions therein, and at 13.13½ chaines set a stake and came out 1.53 chaines apart, he north and me south, and at half the difference between us 76½ lks. we set a limestone 5x14x25 in. square for the dividing line between Missouri and Nebraska. Whole distance across 26.65 chaines. Half the distance across, 13.13½ chaines. And commencing at the meander corner on the Nebraska bank of the old Missouri River bed, at the southeast corner of lot 2, and the northeast corner of lot 3, in sec. 30, town 7, north, range 16 east of the 6th p. m. in Nebraska. And run east to meet D. A. Quick, surveyor of Atchison County, Missouri, running from the Missouri side of the old Missouri River bed on a division of accretions therein, and at 11.35 chaines set a stake and came out 2.00 chaines apart, he north and me south, and at half the difference between us, 1.00 chain, we set a limestone 6x11x20 inches square for the dividing line between Missouri and Nebraska. Marks M. and N.

Whole distance across 22.70 chaines. Half the distance across 11.35 chaines.

(No. 7.)

The division of the accretions from the northeast corner of lot 2, and the southeast corner of lot 1, in section 30, town. 7 north, of range 16 east of the 6th P. M., in Nebraska. Was made in connection with B. F. Rummerfield, surveyor of Atchison County, Missouri, in December, 1891. Run east and at 9.20 chaines set a stone for the dividing line and was 1.94 chaines south of Rummerfield's line.

Whole distance across 18.40 chaines. Half the distance across 9.20 chaines.


40.00
17.00
13.32½
13.32½
Stone
5.85
3
38.80 A
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1
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26.41
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50.00
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Stone
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4
A
63.40
6
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57.60
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59.50
A
28.8
6.89
4.90
27.76
16.02
16.02
Stone
J. M. Hacker
County Surveyor.

(No. 8.)

FIELD NOTES.

No. of Survey .....; date from February 25th to March 29th, 1895.

Survey for Nemaha County, Nebraska.

At request of the Board of County Commissioners of Nemaha County, Nebraska.

Chainmen sworn, W. T. Hacker and H. D. Hacker.

Point established, division of accretions sec. 31, twp. 7 n., rng. 16 E. 6th P. M.

Commencing at the meander corner on the Nebraska bank of the old Missouri River bed at the intersection of the township line between townships 6 and 7 north, of range 16 east of the 6th p. m. in Nebraska, with the old Missouri river bed. Said meander corner being the southeast corner of lot n. 7, in sec. 31, town 7 north, of range 16 east of the 6th p. m., in Nebraska.

And run thence east for the purpose of meeting D. A. Quick, County Surveyor of Atchison County, Missouri, coming from the Missouri side of the old Missouri River bed, and at 16.02 chaines set a stake for half way and came out 89 links apart, he north and me south, and at half the distance between us, 44½ links, we set a limestone 6x15x35 inches square for the dividing line between Missouri and Nebraska, marked M. and N.

Whole distance across the old River bed 32.04 chaines. Half the distance across 16.02 chaines.

Commencing at the meander corner on the Nebraska bank of the old Missouri River bed at the southeast meander corner of lot 6, and the northeast corner of lot no. 7, in sec. 31, town. 7 north, of range 16 east of the 6th p. m., in Nebraska.

And run east to meet D. A. Quick, County Surveyor of Atchison County, Missouri, running from the Missouri side on a division of the accretions, and at 12.84½ chaines set a stake and came out 89 lks. apart, he north and me south, and

one-half the difference 44½ lks. we set a limestone 6x15x36 inches square for the dividing line between Missouri and Nebraska. Marked M. and N. Whole distance across 25.69 chaines. Half the distance across 12.84½ chaines. And commencing at the meander corner on the Nebraska bank of the old Missouri River bed at the southeast corner of lot 1, and the northeast corner of lot 6, in sec. 31, town 7 north, of range 16 east of the 6th p. m. in Nebraska, and run east, to meet D. A. Quick, County Surveyor of Atchison County, Missouri, running from the Missouri side on a division of the accretions, and at 14.87½ ch set a stake and came out 1.00 chaines apart, he north and me south, at half the difference, 50 lks., set a limestone 6x15x30 inches square for the dividing line between Missouri and Nebraska, marked M. and N. Whole distance across 29.75 chaines. Half the distance across 14.87½ chaines. And commencing at the east meander line of lot 1, on the Nebraska bank of the old Missouri River bed, about 20.00 chaines north of the southeast corner of lot 1, in sec. 31, T. 7 North, range 16 east of the 6th p. m., in Nebraska, and run east to meet D. A. Quick, County Surveyor of Atchison County, Missouri, running from the Missouri side on a division of the accretions, and at 13.09 chaines set a stake and came out 1.15 chaines apart, he north and me south at half the difference 57½ links, we set a limestone 5x14x27 inches square for the dividing line between Missouri and Nebraska. Markes M. and N. Whole distance across 26.18 chaines. Half the distance across 13.09 chaines.

And commencing at the meander corner on the Nebraska bank of the old Missouri River bed at the intersection of the section line between sec. 30 and 31, in town. 7 N., range 16 east of the 6th p. m. in Nebraska, with the old Missouri River bed. It being the northeast corner of lot 1, in sec. 31, and the southeast corner of lot 3 in sec. 30, town. 7, north, range 16

(No. 8.)

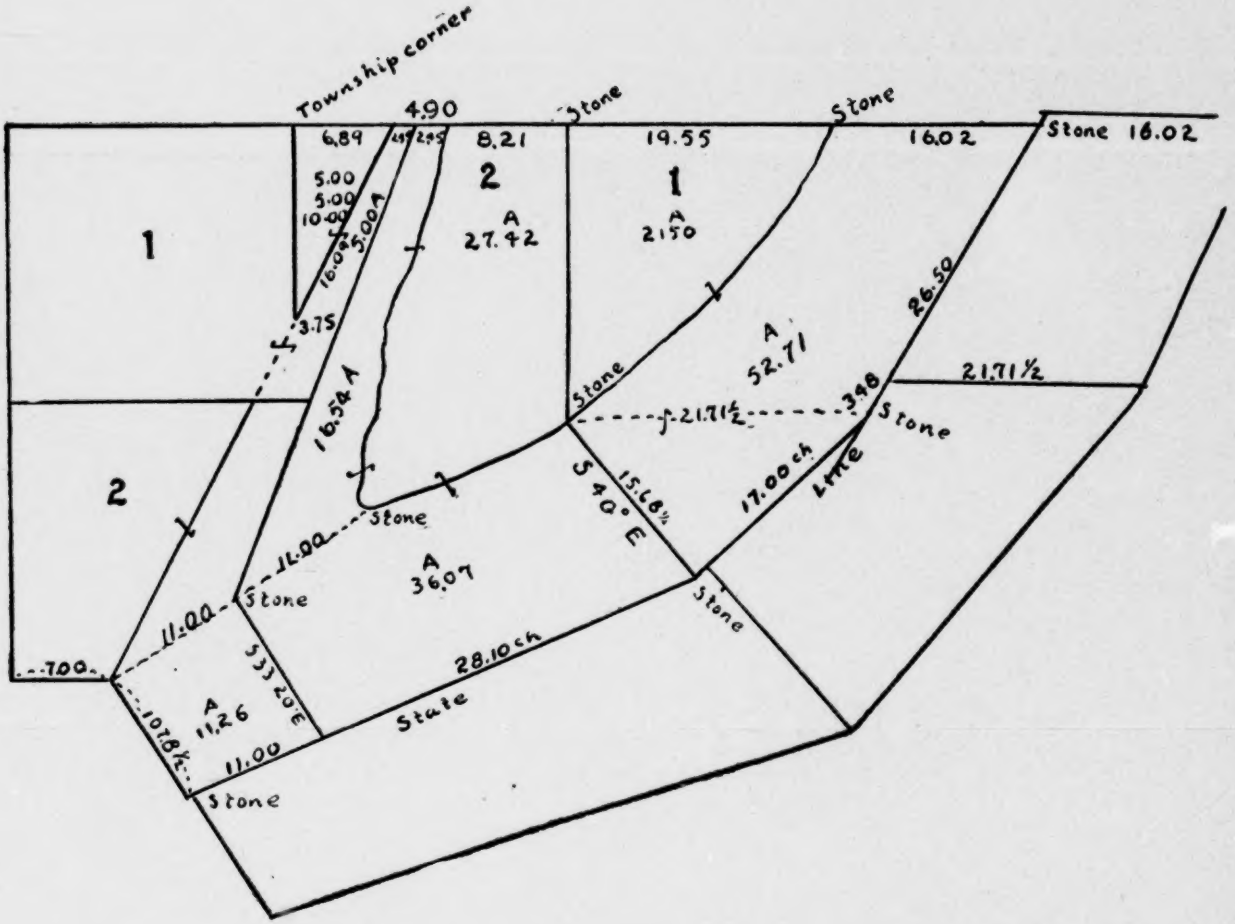
east, and run east to meet D. A. Quick, Surveyor of Atchison County, Missouri. Running from the Missouri side of the old River bed on a division of the accretions, and at 13.32½ chaines set a stake, and came out 1.53 chaines apart, he north and me south at half the difference between us, 76½ links set a limestone 5x14x25 inches square, for the dividing line between Missouri and Nebraska. Markes M. and N.

Whole distance across 26.65 chaines.

Half the distance across 13.32½ chaines.

V. 9° 30′ E.

Section 6 Township 6 N. Range 16 E 6th P.M. Nebr.



J. M. Hacker.
County Surveyor.

(No. 9.)

FIELD NOTES.

No. of Survey .....; date, February 25th to March 29, 1895.

Survey for Nemaha County, Nebraska.

At request of the Board of County Commissioners.

Chainmen sworn, W. T. Hacker and H. D. Hacker.

Point established, division of accretions, to sec. 6 twp, 6 north, rang. 16 east of the 6th p. m.

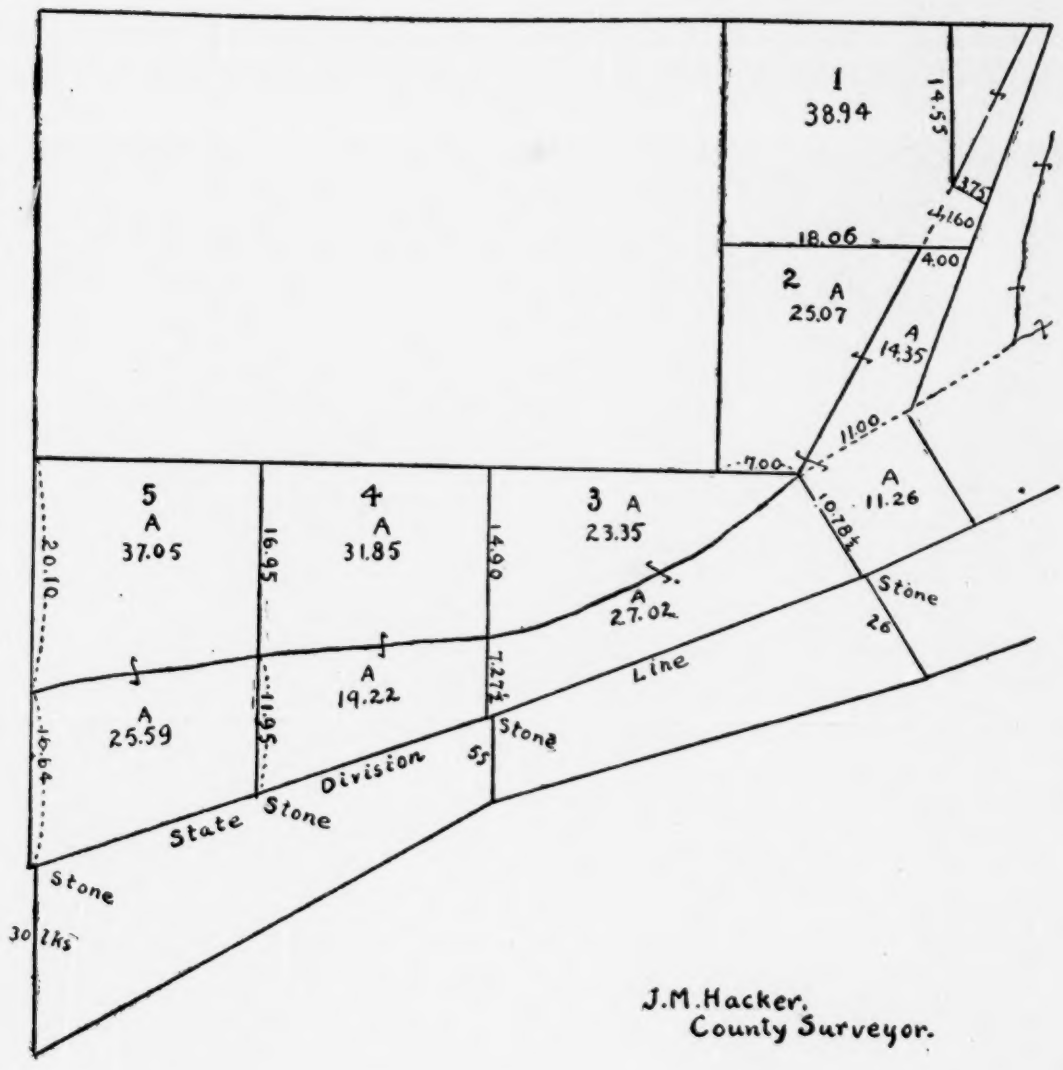
Commencing at the meander corner of the Nebraska bank of the old Missouri River bed at the intersection of the township line between towns. 6 and 7 north, of range 16 east of the 6th p. m., in Nebraska, with said river bed. Said corner being the northeast corner of lot 1, in sec. 6, town 6 north, range 16 east and the southeast corner of lot 7, in sec. 31, town 7 north, range 16 east of the 6th p. m., in Nebraska. And run east to meet D. A. Quick, Surveyor of Atchison County, Missouri, running from the Missouri bank of the old Missouri River bed on a division of accretions in the old Missouri River bed, and at 16.02 chaines set a stake for half way, and come out 89 links apart, he north and me south, at half the difference between us 44½ links we set a limestone 6x15x35 in. square for the dividing line between Missouri and Nebraska. Marked M. and N. Whole distance across 32.04 chaines. Half the distance across 16.02 chaines. And commencing at the meander corner on the Nebraska bank of the old Missouri River bed at the southwest corner of lot 1, and the southeast corner of lot 2, in sec. 6, town 6 north, range 16 east of the 6th p. m. in Nebraska. And run east for the purpose of meeting D. A. Quick, Surveyor of Atchison County, Missouri, running from the Missouri side of the old Missouri River bed on a division of accretions in the old river bed and at 21.71½ chaines set a stake and came out 3.48 chaines apart, he north and me south. At half the difference between us, 1.74 chaines, we set a limestone 6x15x40 inches square, for the dividing

line between Missouri and Nebraska. Marked M. and N.

Whole distance across 43.43 chaines. Half the distance across 21.71½ chaines.

Commencing at the meander corner at the southwest corner of lot 1 and the southeast corner of lot 2, in sec. 6, town 6 north, range 16 east of the 6th p. m., in Nebraska. And run S. 40° E. to meet D. A. Quick, Surveyor of Atchison County, Missouri, running from the Missouri side on a division of the accretions, and at 15.68½ chaines set a stake, and came out 1.98 chaines apart, he east and me west, at half the difference between us, 99 lks., we set a limestone 6x13x39 inches square, for the dividing line between Missouri and Nebraska, Marked M. and N. Whole distance across 31.37 chaines. Half the distance across 15.68½ chaines.

Commencing at a stone set N. 54° E. 11 chaines from the southeast corner of lot 2, sec. 1, town. 6, range 15 east, and at S. 47° W. 11.00 chaines, from the southwest corner of lot 2, in sec. 6, town. 6, range 16 east of the 6th p. m., Nebraska, and run south 33° 30′ E. 11.70 chaines, more or less, to the dividing line between Missouri and Nebraska.



J.M. Hacker.
County Surveyor.

(No. 10.)

FIELD NOTES.

No. of survey .....; date, February 25th to March 29th, 1895.

Survey for Nemaha County, Nebraska.

At request of the Board of County Commissioners.

Chainmen sworn, W. T. Hacker and H. D. Hacker.

Point established, division of accretions, to sec. 1, twp. 6 N., Rng. 15 East of the 6th p. m.

Commencing at the meander corner on the Nebraska of the old Missouri River bed at the southeast corner of lot 2, and the northeast corner of lot 3, in sec. 1, town 6 N., Range 15 east of the 6th p. m., in Nebraska, and run south 33° 30' East, and at 10.87½ chaines met D. A. Quick, Surveyor of Atchison County, Missouri, on a division of accretions with a difference of 26 lks. between us, we set a limestone 6x15x41 inches square for the dividing line between Missouri and Nebraska, Marked M. and N.

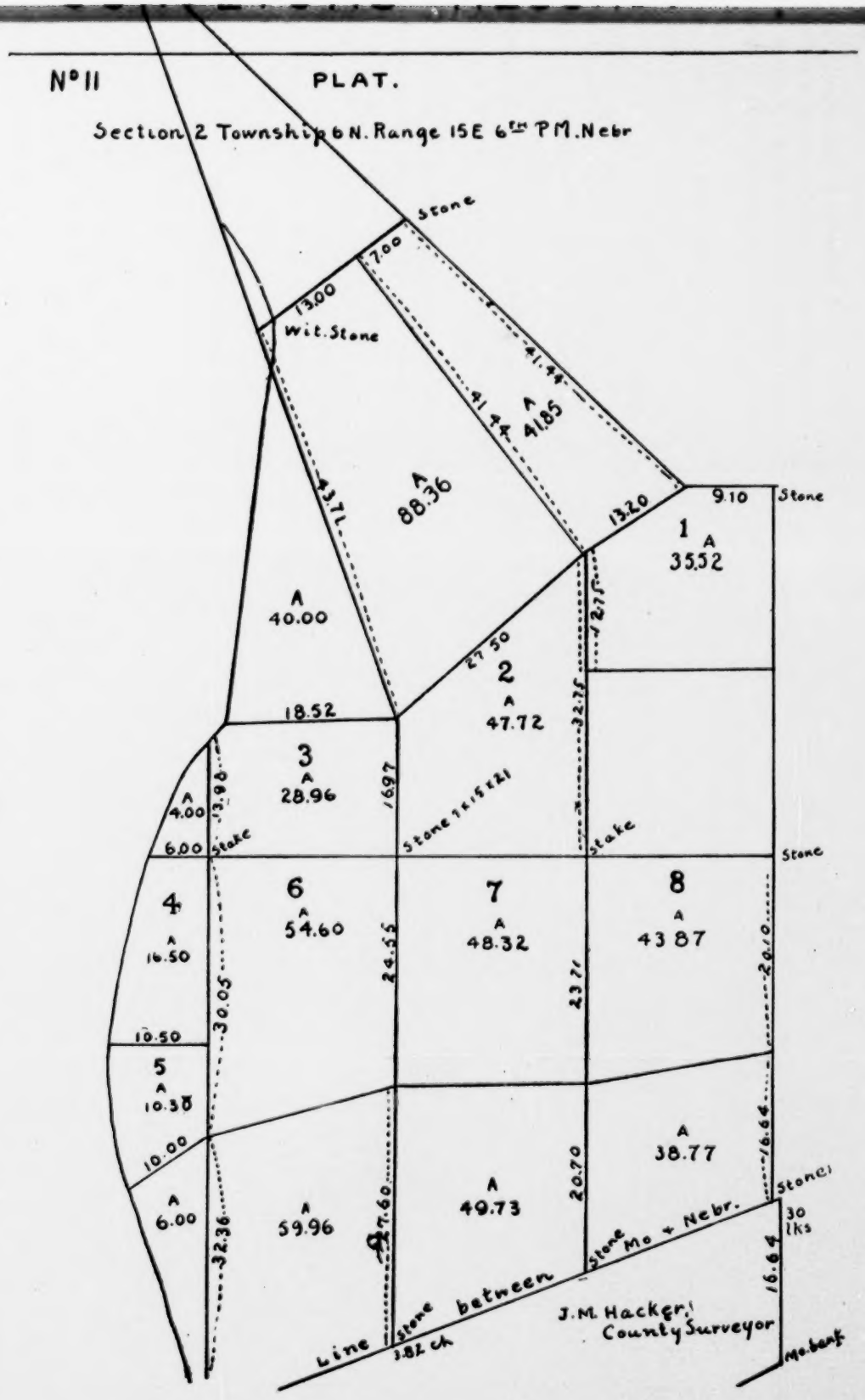
Whole distance across 21.57 chaines. Half the distance across 20.78½ chaines.

Commencing on the Nebraska bank of the old Missouri River bed at the southwest corner of lot 3, the southeast corner of lot 4, in sec. 1, town. 6 N., range 15 east of the 6th p. m. in Nebraska. And run south and at 7.27½ chaines and set a stake and met D. A. Quick, surveyor of Atchison County, Missouri, running from the Missouri bank of the old Missouri River bed, on a division of accretions and came out with a difference of 55 links, he east and me west at half the difference between us, 27½ lks., we set a limestone 8x10x23 inches square, for the dividing line between Missouri and Nebraska, marked M. and N. Whole distance across 15.35 chaines. Half the distance across 7.27½ chaines.

Commencing on the Nebraska bank of the old Missouri River bed, at the intersection of the section line between sec. 1 and 2, in town 6 north, range 15 east of the 6th p. m., in

Nebraska, with the old Missouri River bed being the southwest corner of lot 5, in sec. 1, and the southeast corner of lot 8, in sec. 2, town. 6, range 15 east in Nebraska, and run south and at 16.64 chaines set a stake, and met D. A. Quick, surveyor of Atchison County, Missouri, running from the Missouri bank of the old Missouri River bed on a division of accretions, and came out 30 links apart, he east and me west, and at half the difference, 15 lks., we set a limestone 6x6x30 inches square for the dividing line between Missouri and Nebraska. Marked M. and N. Whole distance across, 33.28 chaines. Half the distance across 16.64 chaines.

Commencing on the Nebraska bank of the old Missouri River bed at the southwest corner of lot 4, the southeast corner of lot 5, in sec. 1, town 6 north, range 15 east of the 6th p. m., in Nebraska, and run south 11.95 chaines, more or less to the dividing line between Missouri and Nebraska and set a limestone 10x12x16 inches square, marked M. and N.


N°11 PLAT.
Section 2 Township 6 N. Range 15 E 6th PM. Nebr
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27.50
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2 A 47.72
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3 A 28.96
32.75
16.97
A 4.00
13.98
6.00
Stake
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Stake
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4 A 16.50
6 A 54.60
7 A 48.32
8 A 43.87
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3.82 ch
J.M. Hacker
County Surveyor
Mo. benf

(No. 11.)

FIELD NOTES.

No. of survey .....; date, February 25th to March 29th, 1895.

Survey for Nemaha County, Nebraska.

At request of the Board of County Commissioners.

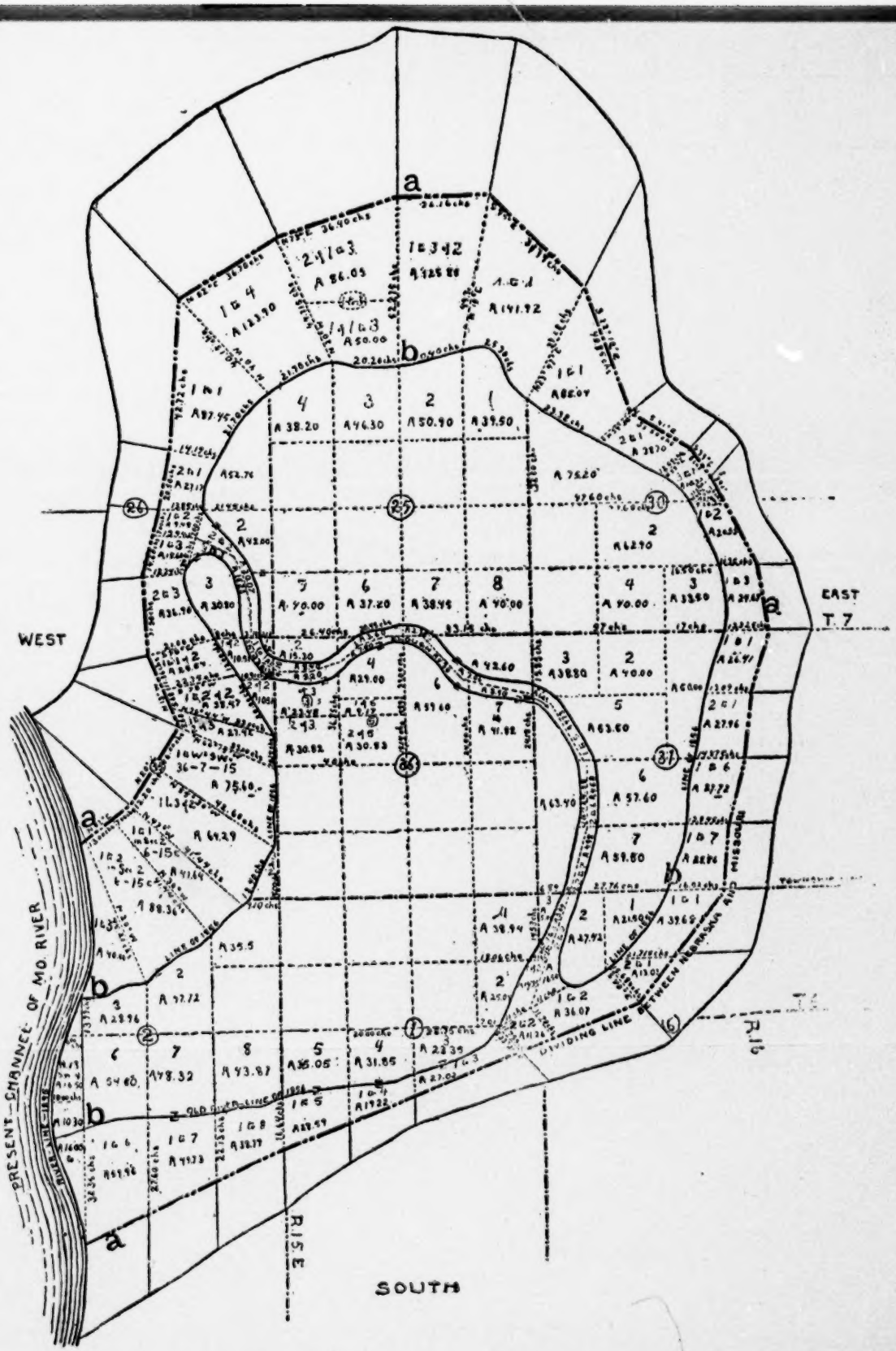
Chainmen sworn, W. T. Hacker and H. D. Hacker.

Point established, division of accretions, to sec. 2, twp. 6 N., rng. 15 east of the 6th P. M.

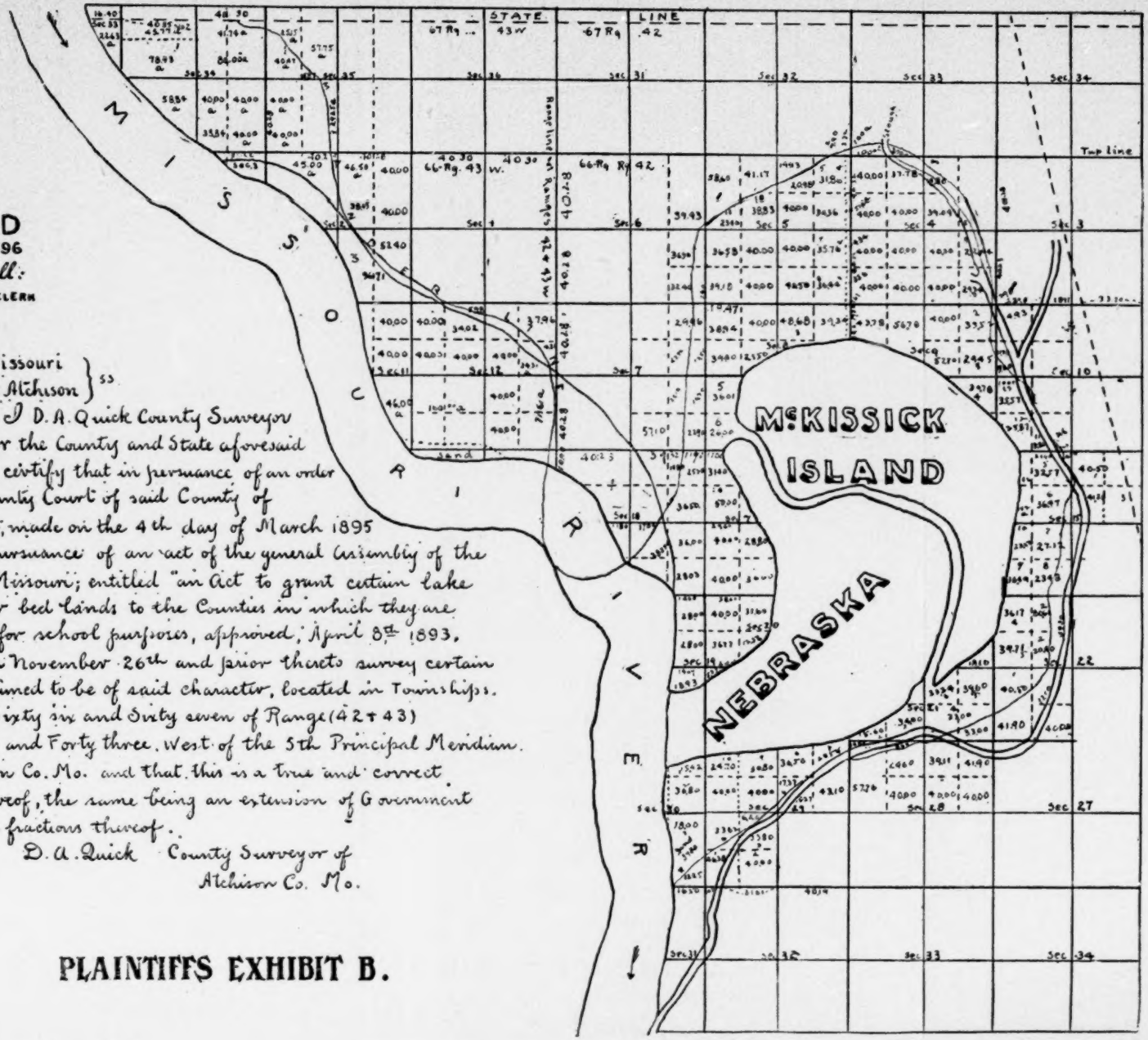
Commencing at the Nebraska bank of the old Missouri River bed at the southwest corner of lot 5 in sec. 1, and the southeast corner of lot 8, in sec. 2, town. 6 north, range 15 east, and run south to meet surveyor Quick running from the Missouri bank of said River bed on a division of accretions, at 16.64 chaines set a stake, and came out thirty links west of Quick's line at half the difference, 15 lks., we set a limestone 6x6x30 for the dividing line between Missouri and Nebraska. Marked M. and N. Whole distance across 33.28 chaines.

Commencing on the Nebraska bank of the old Missouri River bed at the southwest corner of lot 7, and the southeast corner of lot 6, in sec. 2, town. 6, range 15 east, and run south to meet surveyor Quick running on a division of accretions at 27.60½ chaines set a stake, and was 3.84 chaines west of Quick at half the difference 1.92 chaines we set a limestone 7x8x20 inches square for the dividing line between Missouri and Nebraska. Marked M. and N. Whole distance across 55.21 chaines. Commencing on the Nebraska bank of the old Missouri River bed, at the southwest corner of lot 6, and the southeast corner of lot 5, in sec. 2, town. 6, range 15 east, and run south to meet surveyor Quick running north on a division of accretions at 32.36 chaines set a stake and was 80 links west of Quick's line at half the difference, 40 links, we set a limestone 7x14x23 inches square for the dividing line between Missouri and Nebraska. Marked M. and N. Whole distance

across 64.72 chaines. Commencing on the Nebraska bank of the old Missouri River bed at a corner 9.10 chaines west of the northeast corner of sec. 2, town 6 north, range 15 east, and run North 47° W. at 40.00 chaines set a random stake and at 82.88 chaines came to a corner on the Missouri bank of the old Missouri River bed, run with Surveyor Quick. Correcting back we corrected the stake set at 40.00 chaines to 41.44 chaines, and set a limestome 7x12x25 inches square for the dividing line between Missouri and Nebraska. Marked M. and N. Whole distance across 82.88 chaines. Commencing on the Nebraska bank of the old Missouri River bed at the northwest corner of lot 2, and the northeast corner of lot 3, in sec. 2, town. 6, range 15 east, and run north 20° W. at 40.00 chaines set a stake and at 86.42 chaines came to a corner on the Missouri bank of the old Missouri River bed. Run with surveyor Quick. Correcting back, we corrected the stake set at 40.00 chaines to 43.21 chaines, and set a limestone 6x15x25 inches square; as a witness, corner N. 50° E. 3.00 chaines the true corner being in hole of water on the sand bar. Marked M. and N., and on the dividing line between Missouri and Nebraska. The distance from the southeast corner of lot 4, sec. 2, town. 6, range 15 east, north to the Missouri River is 13.99 chaines. And from the southeast corner of said lot 4, west is 6.00 chaines to the Missouri River. And the distance from the northeast corner of lot 5 in said section 2 to the Missouri River is 10.50 chaines. And south from the northeast corner of said lot 5 is 10.05 chaines to the old Missouri River bed. Then


WEST
EAST
T. 7
SOUTH
R15E
R16
PRESENT CHANNEL OF MO. RIVER
DIVIDING LINE BETWEEN NEBRASKA AND MISSOURI
OLD CHANNEL OF 1926
a
b
c
d
1
2
3
4
5
6
7
8
25
26
30
31
36

Fractional Townships 66 and 67 North of Ranges 42 and 43 West of the 5th Principal Meridian covering land of Old Missouri River Bed
Thin line shows Meander of Mo. River when the Government Surveyed this land



FILED
FEB. 4, 1896
A. L. Ball:
CLERK

State of Missouri } ss
County of Atchison }

I D. A. Quick County Surveyor of and for the County and State aforesaid do hereby certify that in pursuance of an order of the County Court of said County of Atchison, made on the 4th day of March 1895 and in pursuance of an act of the general Assembly of the State of Missouri; entitled "an Act to grant certain lake and river bed lands to the Counties in which they are located, for school purposes, approved, April 8th 1893, I did on November 26th and prior thereto survey certain lands claimed to be of said character, located in Townships. (66 & 67) Sixty six and Sixty seven of Range (42 & 43) Forty two and Forty three West of the 5th Principal Meridian. of Atchison Co. Mo. and that this is a true and correct Plat thereof, the same being an extension of Government lines and fractions thereof.

D. A. Quick County Surveyor of
Atchison Co. Mo.

PLAINTIFFS EXHIBIT B.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1903.

NO. ———. ORIGINAL.

STATE OF MISSOURI, Complainant,

vs.

STATE OF NEBRASKA, Defendant.

BRIEF.

After the pleadings were made up in this case and the commissioners appointed, the testimony was taken and a report made. In this report the Commission transmitted to the Court a complete copy of the testimony, and also, after argument of counsel on both sides, made the finding of fact embodied in the report and referred to in the stipulation hereinbefore filed.

We preserve no exceptions to the finding of the Commission upon questions of fact, but rely solely upon the legal proposition that the western boundary of Missouri, north of the mouth of the Kaw river, under the Act of Congress annexing Platte's Purchase to Missouri, was intended to be the Missouri river, wherever the same might run. We, therefore, submit but one exception to the Court for its determination.

EXCEPTION.

Complainant excepts to the action of the Commissioners in refusing to recognize the legality of complainant's prayer, as follows:

"Complainant prays the Commission to find that during the month of July, 1867, the Missouri river, at the point in controversy, suddenly changed its thread and course from its former channel, as shown by complainant's Exhibit B, and that since said change in July, 1867, said river has followed its present channel with no material variations; and that the Commissioners make no further finding of fact, for the reason that the Act of Congress, approved June 7, 1836, annexing Platte's Purchase to the jurisdiction of Missouri, established the thread of the middle channel of said river as it then ran or at any time in the future might run as the boundary line between said states."

The Commissioners refused this request, because they deemed it to be a question of law, and, therefore, declined to pass upon it, leaving it for the determination of the Court.

THE CENTRAL CHANNEL OF MISSOURI RIVER WHEREVER IT MAY AT ANY TIME RUN IS THE BOUNDARY LINE BETWEEN MISSOURI AND NEBRASKA.

The only question here involved, as above stated, is one of law. The contention of Missouri is that the central thread of the middle channel of the Missouri river is the dividing line between the states in question, and that this central thread constitutes at all times the proper line of division regardless of where it may run or be located.

The Act of Congress, annexing Platte's Purchase to the jurisdiction of Missouri, construed in a practical way and in conformity with the legislative memorial of Missouri, approved June 15, 1831, unquestionably fixes the Missouri river as the boundary and brands it as the perpetual and natural monument without further description or further evidence.

There can be no question but that the Missouri river was designated as a natural monument by both the act of annexation

and the memorial requesting the same. Being a natural monument, it must stand as ordained, for natural monuments are objects permanent in character, if they are found upon land as they were placed by nature, such as streams, lakes and ponds.

Washburn's Real Property, 5th Edition, Volume III, page 435.

Teideman on Real Property, 2nd Ed., Sec. 831.

Where a river is made the boundary between jurisdictions, the middle of the river is considered the point or line of demarkation, or, in other words, the term "river" when used to designate a boundary between two jurisdictions, means, in law, the middle of the river.

Stanford vs. Manin et al., 30 Ga., 355.

Hicks vs. Coleman, 85 Am. Dec., 103.

Lowell vs. Robinson, 33 Am. Dec., 673.

Hardin vs. Jordan, 140 U. S., 380.

It is not the meander line formed by what may be termed the water's margin, but the waters themselves which constitute the real boundary.

Railroad Company vs. Schurmer, 7 Wall., 272.

Hardin vs. Jordan, 140 U. S., 380.

Jeffries vs. East Omaha Land Co., 134 U. S., 178.

Houck vs. Yates, 82 Ills., 179.

Fuller vs. Dauphin, 124 Ills., 542.

St. Louis Bridge Co. vs. People, ex rel., 125 Ills., 228.

Butterworth vs. St. Louis Bridge Co., 123 Ills., 535.

It has been said that a river is composed of the bed, banks and stream.

Eastman vs. Water Company, 43 Minn., 60.

The foregoing declaration, however, is not an exact statement of the true meaning of the term. A more apt way of putting

it is that a river is composed of a stream of constantly and continuously flowing water, through a natural drainage basin, with the bed and banks as essential incidents to it. It is not the bed and banks which constitute the river, but the natural stream of water. When observed from the standpoint of the reason upon which the legislature of Missouri memorialized Congress to annex Platte's Purchase to Missouri and the Act of Congress annexing the same, no other conclusion can be reached but that it was intended to make the stream the boundary line wherever that stream might at any time run.

The channel is the passage way between the banks through which the water of the stream flows.

Benjamin vs. River Improvement Company, 42 Mich., 628.

The term "natural channel" includes not only all channels through which in the existing conditions of the country water naturally flows, but new channels through which it might afterwards flow.

Larrabe vs. Cloverdale, 131 Calif., 96.

The rule is settled that meander lines are not intended as boundaries, but that the body of the water will be regarded as the true boundary.

Jeffries vs. East Omaha Land Co., 134 U. S., 178.
Mitchell vs. Smith, 140 U. S., 406.
Hardin vs. Jordan, 140 U. S., 371.
Clute vs. Fisher, 65 Mich., 48.
Norwood vs. Smith, 59 Wis., 344.

In this connection, we are not unmindful of the fact that this court has decided in certain instances that if a boundary river leaves its old channel and forms a new one, within the limits of either of the states which border on it, the old channel will remain the boundry.

Indiana vs. Kentucky, 136 U. S., 479.
Missouri vs. Kentucky, 11 Wall., 395.
Nebraska vs. Iowa, 143 U. S., 359.

Our contention, however, is that the decisions of this court in the above cited cases do not control for the reason that different principles are involved, and the same state of facts does not pertain. In the case at bar, that territory known as Platte's Purchase, was annexed to the State of Missouri by reason of a memorial coming from its legislative department in 1831, wherein certain important and substantial reasons were set out why the Missouri River, north of the mouth of the Kaw, should be fixed forever as an absolute boundary of Missouri, and soon after this memorial was presented to Congress the territory in question was annexed to the jurisdiction of the State. There can be no question but that Congress had authority to annex the territory in the manner herein described. There can be no question but that it was the intention of the legislature of Missouri to make the request in the manner herein presented, because it was so shown clearly from the resoultion. It is a matter of no importance whether or not the same conditions exist today as existed then. The question for determination is, what was the intention of Congress at the time of the annexation of Platte's Purchase to Missouri?

If it can be observed from the annexation statute construing it in the light of the memorial, that the plain intention of Congress was to make the Missouri River wherever it might run the absolute boundary of the state, it matters not whether those conditions still exist which were considered in the memorial, and which authorized, warranted and induced the Federal Congress to so ordain. The conditions which moved Congress to enact the statute may have passed away. That, however, does not release the State of Missouri of the right to demand a strict compliance with the original grant as it was intended by the Federal Government at the time it was made.

Missouri was admitted into the Union in 1820, long prior to the admission of Nebraska and during a time when all the territory immediately west of the Missouri River belonged to the Federal Government. At the time of its admission there

was no practical assurance that the territory now known as Nebraska would ever be admitted into the Union. It belonged to the Federal Government to be disposed of at will, to be held as a territory or afterwards subdivided and admitted into the Union as a state.

It is our contention, therefore, that by accepting the terms of the memorial annexing Platte's Purchase to the State of Missouri, the Federal Government made an absolute guarantee to the people of Missouri that the stream of water flowing from the Rockies, known as the Missouri River, should forever be its absolute boundary line.

Construed in the light of the memorial and according to the plain words of the statute of annexation, Missouri now claims that fixed and vested rights were obtained thereunder, and that she is entitled to complete jurisdiction and sovereignty over all the territory lying east of the Missouri River as hereinbefore stated, and that it was more important at the time of the annexation that this river be made the absolute boundary for all time to come than to afterwards have such boundary changed by reason of sudden variation in the channel of the river. Indeed, had the fact in question been raised long prior to the admission of Nebraska into the Union, and after the annexation statute had been approved, no one would have questioned the right of Missouri to claim and obtain absolute sovereignty over the territory here involved. This principle is made manifest by reason of the terms of the statute construed in the light of the memorial and it fixes a vested privilege and right in the State of Missouri regardless of what might afterwards have been done by the Federal Congress without the consent of this complainant.

"The right and duties with respect to waters depends primarily upon the relations which the opposing parties bear towards each other."

This is the language of Farnham on Waters and Water Rights, page 3.

In this controversy, there is no agreement or contractual relations existing between the State of Nebraska and the State of Missouri, so far as the boundary line between the two states is concerned. Both states derive their power and rights in the premises from the Federal Government and Missouri, prior to

the admission of Nebraska, being granted and delegated with sovereignty and power over the territory known as Platte's Purchase, and the Missouri River being at the time fixed as the absolute boundary line, is asking that the terms of the grant annexing the northwestern territory to it be strictly carried out. Congress unquestionably had authority to fix the Missouri River as it then and as it might subsequently run as the western boundary. When Nebraska was admitted into the Union, it came with both actual and constructive notice that its jurisdiction could never extend to the east of the Missouri River south of the boundary line between Iowa and Missouri.

We, therefore, submit that the request made upon the commissioners by complainant above referred to, should have been by them granted and no other or further finding of fact should have been made.

Respectfully submitted,

EDWARD C. CROW,
Attorney General.

SAM B. JEFFRIES,
Assistant Attorney General,
Attorneys for Complainant.

No. 7, Original.

Supreme Court of the United States.

OCTOBER TERM, 1930.

THE STATE OF MISSOURI,
Complainant,

v.

THE STATE OF NEBRASKA,
Defendant and Cross Complainant.

BRIEF OF DEFENDANT AND CROSS COMPLAINANT.

EDWARD C. CROW, *Attorney General,*
SAM B. JEFFRIES, *Assistant Attorney General,*
For Complainant.

FRANK N. PROUT, *Attorney General,*
W. H. KELLIGAR, *Special Counsel,*
Solicitors for Defendant and Cross Complainant.

Supreme Court of the United States.

OCTOBER TERM, 1899.

No. 8, Original.

THE STATE OF MISSOURI,
Complainant,
v.
THE STATE OF NEBRASKA,
Defendant,
and Cross-Complainant.

BRIEF OF DEFENDANT AND CROSS-COMPLAINANT.

EDWARD C. CROW, *Attorney General,*
SAM B. JEFFRIES, *Assistant Attorney General,*
For Complainant.

FRANK N. PROUT, *Attorney General,*
W. H. KELLIGAR, *Special Counsel,*
Solicitors for Defendant and Cross-Complainant.

Statement.

This is a suit to establish the middle of the present channel of the Missouri River as the boundary between Atchison County, Missouri, and Nemaha County, Nebraska, to quiet complainant's title to the land on the Missouri side and to perpetually enjoin defendant from disturbing complainant's possession.

Nebraska was admitted into the Union February 9, 1867. (14 U. S. Statutes at Large, p. 392) The Act of Congress authorizing the admission of Nebraska fixed

the middle of the channel of the Missouri River as the boundary between Nebraska and Missouri. (13 U. S. Statutes at Large, p. 16, sec. 2) By a previous Act of Congress passed in 1836 the western boundary of the State of Missouri was extended to the Missouri River. (5 U. S. Statutes at Large, p. 34, ch. 86) That the middle of the channel of the Missouri River was the boundary between the states when Nebraska was admitted into the Union is not disputed in the pleadings or proof. At that time the course of the river between Atchison County, Missouri, and Nemaha County, Nebraska, was in the form of a loop fifteen miles around and almost surrounding a body of land known as Island Precinct, Nemaha County, Nebraska. During high water July 5, 1867, the river suddenly cut a channel across the narrow neck of Island Precinct, abandoned the channel of the fifteen-mile loop and left Island Precinct east of the Missouri River.

The court appointed commissioners who took the testimony and made findings of fact pursuant to the order of court and the following stipulations of the parties:

"Whereas, the honorable commissioners appointed by this court to hear and report the evidence in the case and counsel for the respective parties are in doubt concerning the powers of said commissioners under the order of this court, and the former stipulation between the parties hereto providing for such appointment, it is therefore further stipulated and agreed between the parties hereto that the said commissioners shall in addition to taking and reporting the evidence adduced in said case, make such findings of fact as shall from the evidence seem to them right and proper, and report such findings of fact to the court, and transmit the same to the court along with the evidence so taken and reported." (Stipulation to Submit, p. 3.)

Among the findings of the commissioners are the following:

"1. We find from the evidence that defendant's exhibit B attached to its answer herein, correctly shows the bed and channel of the Missouri River as it existed prior to July 5, 1867; that it was defined and run substantially in the same channel from the admission of the respective states to the Union until July 5, 1867, having only such variations as naturally follow in the course of time in the Missouri River, varying from one side of the river to the other.

"2. We find from the evidence that prior to July 5, 1867, that what was known in Nemaha County, Nebraska, as Island Precinct, which includes McKissick Island, was located in the bend of the river as shown by defendant's said exhibit B, McKissick Island being the northern and eastern portion of said land, situated in the bend of the river, being north of what is marked as the slough in said exhibit. We find that McKissick Island, prior to July 5, 1867, as surveyed by the United States Government, contained 2,910 acres of land. We find that on July 5, 1867, and within one day during the time of high water, the Missouri River cut a new channel across and through the narrow neck of land at the west end of Island Precinct, about one-half mile wide, making for itself a new channel, and passing through the territory of Nebraska for the distance across the neck of the ox-bow, as shown by complainant's exhibit B. We further find that from and after July 5, 1867, the waters of the Missouri River ceased running around McKissick Island and gradually in the course of a few years the old channel dried up and became dry and tillable land and valuable for agricultural purposes, thus vacating the old Missouri bed about fifteen miles in length. We find that complainant's exhibit B shows the bed or channel of the Missouri River as it now runs, and as it has run since July 5, 1867." (Commissioners Findings, pp. 5, 6)

Complainant contends that the middle of the present channel of the Missouri River is now the boundary line and that Island Precinct is now a part of the State of Mis-

souri. Defendant insists that the middle of the abandoned channel of the fifteen-mile loop around Island Precinct is still the boundary between the states, and that Island Precinct was never detached from Nebraska.

The question presented by the record is: Was the boundary changed by the sudden change in the channel of the Missouri River July 5, 1867?

Argument.

Where the course of a river forming the boundary between states is suddenly changed by avulsion, the boundary remains unchanged.

The findings of the commissioners and the evidence adduced before them show that the Missouri River between Missouri and Nebraska changed its course in a single day—July 5, 1867—and left a large area of Nebraska land on the east side. This fact and the correctness of the findings of the commissioners are also established by the following stipulations of the parties hereto:

"Now come the parties in the above entitled cause, by their respective attorneys, and enter into and make the following stipulation and agreement:

"First. It is hereby agreed that the findings of fact made by the commissioners herein, as set out in their report, shall constitute and is a proper finding of fact herein, and is in all respects true and correct, and no exceptions are taken thereto by either party and all exceptions to the said finding of facts are hereby waived.

"It is further agreed that the hereto attached defendant's exhibit B, complainant's exhibit B, defendant's exhibit D, and defendant's exhibit E, with the eleven sectional maps, numbered one to eleven inclusive, together with the field-notes attached thereto, all of which are referred to by the commissioners in their report, shall be

hereto attached and made a part hereof, and that the copies of said exhibits, as hereto attached and made a part hereof, are true and correct copies of the same.

"It is further agreed that the petition to the Federal Congress by the State of Missouri through its legislative branch of government, petitioning Congress to extend the western boundary line of the State of Missouri so as to include what is known as Platte's Purchase, and referred to in complainant's bill, was introduced in evidence by complainant and a copy of which is hereto attached and made a part hereof, and marked complainant's exhibit D.

"It is further agreed that in view of this agreement with reference to the finding of facts by the commissioners, the record of the evidence herein need not be printed and that this cause shall be submitted to the court upon questions of law arising out of the pleadings, the report of the commissioners and this stipulation, and each party shall present to the court in its brief, such propositions of law as it may rely upon." (Stipulation to Submit, p. 2).

It is therefore conclusively established by the record that during a single day—July 5, 1867—the Missouri River abandoned fifteen miles of its channel between Missouri and Nebraska and left a large area of Nebraska territory on the Missouri side of the river. The change having taken place in a single day, it is perfectly clear that no law applicable to accretion could have operated to transfer the territory in controversy from Nebraska to Missouri. The jurisdiction of those states and the status of the citizens do not fluctuate with every freak of the Missouri River. If they did, a large portion of the Nebraska population might go to bed at night in Nebraska and get up in the morning on the same spot in Missouri.

The rule applicable to the facts presented by the record has been stated by this court as follows.

"It is equally well settled that where a stream, which is a boundary, from any cause suddenly abandons its old

and seeks a new bed, such change of channel works no change of boundary; and that the boundary remains as it was, in the center of the old channel, although no water may be flowing therein." (*Iowa v. Nebraska*, 143 U. S. 361.)

That the boundary line between states does not change with a change in the channel of a river which had been the boundary is shown by an earlier case. In a controversy between Missouri and Kentucky over Wolf Island in the Mississippi River this court said:

"If the river has subsequently turned it course, and now runs east of the island, the status of the parties to this controversy is not altered by it, for the channel which the river abandoned remains, as before, the boundary between the states and the island does not in consequence of this action of the water change its owner." (*Missouri v. Kentucky*, 11 Wal. 401.)

This case was followed by the Supreme Court of Nebraska in *Holbrook v. Moore*, 4 Neb., 437.

In *Collins v. State*, 3 Tex. Ct. App. 325, the Texas Court of Appeals said:

"If the course of a river is suddenly changed, the relicted soil remains according to the former bound."

After citing the case of *Iowa v. Nebraska*, 143 U. S., 359, the Common Pleas Court of Hamilton County, Ohio, said:

"In the case at bar, till the new channel was cut through, the water ran in the old channel as above located. When the new channel was cut through, the river ran through that, and the old channel became an abandoned channel. The change was a sudden and rapid change—was avulsion—as distinguished from an imperceptible change—accretion. A change of channel could not in the nature of things be instantaneous. It must require a certain time, but if it is rapid, sudden, as distinguished from an imperceptible change, I think under this late case, it must

be controlled by the law of avulsion." (*Willey v. Lewis*, 28 Weekly L. B. 104)

Complainant in its brief has been unable to refute this point but insists that it is not applicable to the present controversy for the following reason:

"The Act of Congress, annexing Platte's Purchase to the jurisdiction of Missouri, construed in a practical way and in conformity with the legislative memorial of Missouri, approved June [January] 15, 1831, unquestionably fixes the Missouri River as the boundary and brands it as the perpetual and natural monument without further description or further evidence." (Complainant's Brief, p. 2)

This legislative memorial of Missouri will be found on pp. 9-16 of the stipulation to submit. It is an appeal to Congress to extend the western boundary of the State of Missouri to the Missouri River. Complainant insists it was in pursuance of this memorial that Congress in 1836 passed the following act:

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that when the Indian title to all the lands lying between the State of Missouri and the Missouri River shall be extinguished, the jurisdiction over said lands shall be hereby ceded to the State of Missouri, and the western boundary of said state shall be then extended to the Missouri River, reserving to the United States the original right of soil in said lands, and of disposing of the same; provided, that this act shall not take effect until the president shall by proclamation declare that the Indian title to said lands has been extinguished; nor shall it take effect until the State of Missouri shall have assented to the provisions of this act." (5 U. S. Statutes at Large, p. 34)

This Act of Congress merely extends the boundary of the State of Missouri to the Missouri River upon extinguishment of the Indian title to the intervening land. The statute does not purport to change the rule of law

that where the course of a river forming a boundary is suddenly changed by avulsion, the boundary remains unchanged. The act furnishes no foundation for complainant's argument that the shifting channel of the Missouri River, wherever it may be, whether changed by accretion or avulsion, is the eternal boundary line between Missouri and Nebraska. If the Missouri River should suddenly cut across the west end of Nebraska, complainant's theory would wipe Nebraska off the map and leave Missouri in possession of a vast empire acquired without regard to the rights of the inhabitants. No such conclusion is deducible from the enactment quoted.

But the argument of complainant seems to be that the act of Congress derived some additional significance from the legislative memorial of Missouri, in pursuance of which the statute was enacted. The memorial amounts to nothing more than an argument in favor of the passage of the act. The intention of Congress is clearly expressed in the enactment and there is no occasion to resort to the memorial, either to ascertain the legislative will or to give effect to the statute.

When the legislative memorial of Missouri was adopted there was a strip of land between the western boundary of that state and the Missouri River. According to the memorial this strip was the land of the outlaw and the savage and the Missouri River was the only great highway of the region. In the interests of civilization Congress, therefore, was memorialized to extend the jurisdiction of the State of Missouri to the Missouri River. If there was any reason at that time why the jurisdiction of Missouri should follow every change in the course of the Missouri River, that reason does not now exist. Outlawry and savagery are now unknown in Platte's Purchase and there is order in every part of the region on both sides of the river.

The legislative memorial of Missouri, however, added nothing to the Act of Congress extending the boundary of Missouri to the Missouri River. The general rule applicable to boundaries was not changed. The Act of Congress made the Missouri River as then existing the boundary. All the territory added to the Missouri side of the river by accretion is within the jurisdiction of that state, but Missouri never had any jurisdiction over any tract of land transferred from the west side to the east side by a sudden change in the channel.

Had Nebraska never been admitted into the Union, the State of Missouri would not now have jurisdiction of a crime committed on the land in dispute known as Island Precinct.

In *Collins v. State*, 3 Tex. Ct. App. 323, the report of the case shows that a crime was committed on a 150-acre tract of land on the Texas side of the river which had been the boundary between Texas and the Choctaw Nation; that the land described had formerly been part of the territory of the Choctaw Nation, but was changed to the Texas side of the river by a change in the channel thereof; that the criminal was tried and convicted in the county court of Bowie County, Texas; and that he took the case to the Court of Appeals where the prosecution was dismissed. The Texas Court of Appeals held that the tract of land where the crime was committed was part of the territory of the Choctaw Nation and that Texas had no jurisdiction of the crime. The court said:

"The land lying in the 'cut-off' between the old river and the new channel, as testified to by the witnesses in this case, is in the Choctaw Nation, and the old river-bed is the boundary line between Texas and the Choctaw Nation at that point." (*Collins v. State*, 3 Tex. Ct. App. 324)

It follows, therefore, that neither the necessity for the police protection promised by the memorial nor the

Act of Congress extending the boundary could add any land to Missouri by the action of the river in suddenly changing its course to a different channel.

It is a rule of the courts both State and Federal that where the course of a river forming the boundary between States is suddenly changed by avulsion, the boundary remains unchanged.

It is respectfully urged that the rule stated in the cases cited resolves against complainant the only point presented by the record in this case, and that a decree should be entered dismissing the petition at complainant's costs, and establishing the center of the abandoned channel of the Missouri River as the boundary in dispute.

Respectfully submitted,

FRANK N. PROUT, *Attorney General,*
W. H. KELLIGAR, *Special Counsel,*

Solicitors for Defendant and Cross-Complainant.

August 6, 1904.

FILED
DEC 3 1902
JAMES H. MCKENNEY,
Clerk.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1901.

STATE OF MISSOURI, Plaintiff.
vs.
STATE OF NEBRASKA, Defendant.

5 Orig

STIPULATION.

THE STATE OF MISSOURI,

By _____,
Attorney-General of Missouri.

THE STATE OF NEBRASKA,

By _____,
Attorney-General of Nebraska.

TRIBUNE PUB. CO., JEFFERSON CITY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1901.

STATE OF MISSOURI, Plaintiff.
vs.
STATE OF NEBRASKA, Defendant.
} STIPULATION.

It is hereby STIPULATED by and between the State of Missouri and the state of Nebraska, that the above entitled cause, as well as the cause of the State of Nebraska vs. the State of Missouri, may be referred to two Commissioners, to take the testimony pertinent to issues raised by the Bill of the State of Missouri, the Answer thereto of the State of Nebraska, and the Reply of the State of Missouri, as well as the Cross-bill of the State of Nebraska, the Answer thereto by the State of Missouri, and the Reply of the State of Nebraska, and report the facts and their findings thereon to the Court within a reasonable time.

It is further stipulated by the said parties, that Mr. Alfred Hazlett of the Bar of the Supreme Court of Nebraska, and Mr. John W. Halliburton of the Bar of the Supreme Court of Missouri, may be appointed as said Commissioners.

It is further stipulated by the said parties, that each party may have such time as it may desire to file such pleadings as it may be advised are necessary, subject to such limitations as the Court may fix.

THE STATE OF MISSOURI,

By _____,
Attorney-General of Missouri.

THE STATE OF NEBRASKA,

By _____,
Attorney-General of Nebraska.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. ———. Original.

THE STATE OF NEBRASKA, Plaintiff,

vs.

THE STATE OF MISSOURI, Defendant.

MOTION FOR LEAVE TO FILE ANSWER TO CROSS BILL OF NEBRASKA.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Comes now the defendant, by its Attorney-General, Edward C. Crow, and moves the Court for leave to file its answer to the cross bill of the state of Nebraska.

Attorney-General of Missouri.

Office Supreme Court U. S.
FILED
APR 21 1902
JAMES H. McKENNEY,
Clerk.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. 65. Original.

THE STATE OF MISSOURI, Plaintiff,

vs.

THE STATE OF NEBRASKA, Defendant.

MOTION FOR LEAVE TO FILE REPLICATION TO DEFENDANT'S ANSWER.

Attorney-General of Missouri.

TRIBUNE PUB. CO., JEFFERSON CITY.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1901.

No. ———. Original.

THE STATE OF MISSOURI, Plaintiff,

vs.

THE STATE OF NEBRASKA, Defendant.

MOTION FOR LEAVE TO FILE REPLICATION TO DEFENDANT'S ANSWER.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Now comes the plaintiff in the above entitled cause and moves the Court for leave to file its replication to defendant's answer.

Attorney-General of Missouri.

N. 5, original.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1904.

STATE OF MISSOURI, Complainant,

vs.

STATE OF NEBRASKA, Defendant.

STIPULATION.

In the opinion of the Court in the above entitled cause, the order and finding of the Court having been made as follows:

"It appears from the record that about the year 1895 the county surveyors of Nemaha county, Nebraska, and Atchison county, Missouri, made surveys of the abandoned bed of the Missouri river, ascertained the location of the original banks on either side, and to some extent marked the middle of the old channel. If the two states will agree upon these surveys and locations as correctly marking the original banks of the river and the middle of the channel, the Court will, by decree, give effect to that agreement; or if either state desires a new survey, the Court will order one to be made and will cause monuments to be placed so as to permanently mark the boundry lines between the two states. The disposition of the case by final decree is postponed for thirty days in order that the Court may be advised as to the wishes of the parties in respect to these details."

In pursuance whereof now comes the parties hereto by their respective counsel and agree that the said surveys made by the county surveyors of Nemaha county, Nebraska and Atchison county, Missouri,

as reported by the commissioners and set forth in the opinion of the Court constitute and be the correct boundary line between said states, the same constituting the middle of the old channel of Missouri river as found by said Court in its opinion.

It is further agreed between the parties hereto that the monuments marking said boundary line established by the said county surveyors of said counties are not of a permanent character and many of them have become destroyed or removed, and that in order to mark a permanent boundary line it is necessary and is deemed best that permanent monuments be erected at regular intervals on said line in such manner as will quiet all dispute in reference to said boundary.

It is further agreed that said permanent monuments can be best established under the supervision of the commissioners heretofore appointed by the Court, to wit: Alfred Hazlett and John W. Halliburton, and it is therefore requested by the parties to this cause that the Court, by a proper order, direct and require said commissioners to establish or cause to be established under their direction such permanent monuments as may by them be deemed necessary in the premises and in accordance with the order of the Court heretofore made, and make a report to the court of their acts and doings therein. In the execution of their powers herein said commissioners shall have authority to employ such surveyors and other assistants and procure such material as may be necessary in the establishment of the permanent monuments marking said boundary line in accordance with the opinion of the Court heretofore rendered and this agreement.

It is further agreed that said commissioners for their services herein shall receive such compensation as may be agreed upon by the respective parties, and if the parties are unable to agree, then such as may be fixed by the Court after the services have been performed and due report thereon made.

On account of the unfavorable condition of the weather during the winter months and of the character of the ground during the spring months, the parties hereto respectfully request the Court that said commissioners be granted until the first day of May, 1905, in which to make their report.

State of Missouri, Complainant, by

Edward C. Crow

.....

Attorney-General.

James B. Jeffries

.....

Assistant Attorney-General.

State of Nebraska, Defendant, by

E. B. Smith

.....

Supreme Court of the United States.

No. 5, Original.—October Term, 1904.

The State of Missouri
vs.
The State of Nebraska. } Bill.

The State of Nebraska
vs.
The State of Missouri. } Cross Bill.

[December 19th 1904.]

Mr. Justice Harlan delivered the opinion of the Court.

This is a case of disputed boundary between two States of the Union.

The suit was commenced by an original bill filed in this court by the State of Missouri against the State of Nebraska. The relief sought by the former State is a decree declaring its right of possession of, and its jurisdiction and sovereignty over, certain territory east and north of the center of the main channel of the Missouri River as it runs between the two States at the present time; that Missouri be quieted in its title thereto; and that the State of Nebraska be forever enjoined and restrained from disturbing Missouri in the full enjoyment and possession of said territory.

The State of Nebraska, after answering, filed a cross bill asking a decree confirming the possession, jurisdiction and sovereignty of Nebraska over said territory; that the boundary line between that part of Missouri known as Atchison County and that part of Nebraska known as Nemaha County, be ascertained and established, and permanent monuments erected to indicate the location of such line; and that the State of Missouri be enjoined and restrained from disturbing the State of Nebraska in the full enjoyment and possession of said territory.

The commissioners heretofore appointed to take the evidence have filed their report, and it is agreed that their finding of facts is correct. The case is before us upon questions of law arising out of the pleadings, the report of the commissioners, and the stipulation of the parties.

By an act of Congress of March 6th 1820 provision was made for the admission of Missouri into the Union with the following boundary: "Beginning in the middle of the Mississippi River, on the parallel of thirty-six degrees north latitude; thence west, along that parallel of latitude, to the San Francois River; thence up and following the course of that river, in the middle of the main channel thereof, to the parallel of latitude thirty-

six degrees and thirty minutes; thence west along the same to a point where the said parallel is intersected by a meridan line passing through the middle of the mouth of the Kansas River, where the same empties into the Missouri River; thence from the point aforesaid, north, along the said meridan line, to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines, making the said line to correspond with the Indian boundary line; thence east from the point of intersection last aforesaid, along the said parallel of latitude, to the middle of the channel of the main fork of the said river Des Moines; thence down and along the middle of the main channel of the said river Des Moines, to the mouth of the same, where it empties into the Mississippi River; thence due east to the middle of the main channel of the Mississippi River; thence down and following the course of the Mississippi River, in the middle of the main channel thereof, to the place of beginning: *Provided*, That said State shall ratify the boundaries aforesaid: (*a*) *And provided also*, That the said State shall have concurent jurisdiction on the river Mississippi, and every other river bordering on the said State, so far as the said river shall form a common boundary to the said State and any other State or States, now or hereafter to be formed and bounded by the same—such rivers to be common to both; and that the river Mississippi, and the navigable rivers and waters leading to the same, shall be common highways, and forever free, as well to the inhabitants of the said State as to other citizens of the United States, without any tax, duty, impost or toll therefor imposed by the said State." 3 *Stat.* 545.

On the 15th day of January 1831 the State of Missouri, speaking by its Legislature, memorialized Congress to make more certain and definite its northwest boundary. That memorial, among other things, stated: "When this State government was formed, the whole country on the west and north was one continued wilderness, inhabited by none but savages, and but little known to the people or to the Government of the United States. Its geography was unwritten, and none of our citizens possessed an accurate knowledge of its localities, except a few adventurous hunters and Indian traders. The western boundary of the State as indicated by the act of Congress of the sixth of March, eighteen hundred and twenty, and adopted by the Constitution of Missouri, is a 'meridian line passing through the middle of the mouth of the Kansas River, where the same empties into the Missouri River,' and extends from the parallel of latitude of 36 degrees and thirty minutes north, 'to the intersection of the parallel of latitude which passes through the rapids of the river Des Moines.' The part of this line which lies *north of the Missouri River* has never been surveyed and established, and consequently its precise position and extent are unknown. It is believed, however, that it extends about one hundred miles north from the Missouri

River, and almost parallel with the course of the stream, so as to leave *between the line and the river a narrow strip of land*, varying in breadth from fifteen to thirty miles. This small strip of land was acquired by the United States from the Kansas Indians, by the treaty of the third of June, eighteen hundred and twenty-five, and is now unappropriated and at the free disposal of the General Government. . . These considerations seem to us sufficiently obvious to impress upon the public mind the necessity of interposing, whenever it is possible, some visible boundary and natural barrier between the Indians and the whites. The Missouri River, bending as it does, beyond our northern line, will afford the barrier against all the Indians on the southwest side of that river, by extending the north boundary of this State in a straight line westward, *until it strikes the Missouri, so as to include within this State the small district of country between that line and the river*, which we suppose is not more than sufficient to make two, or at the most three, respectable counties. . . In every view, then, we consider it expedient that the district of county in question should be annexed to and incorporated with the State of Missouri; and to that end we respectfully ask the consent of Congress. . . With these views of the present condition and future importance of that little section of country, and seeing the impossibility of conveniently attaching it now or hereafter to any other State, your memorialists consider it highly desirable, and indeed necessary, that it should be annexed to and form a part of the State of Missouri. And to the accomplishment of that desirable end we respectfully request the assent of Congress."

A subsequent act, entitled "An act to extend the western boundary of the State of Missouri to the Missouri River," approved June 7th 1836, provided: "That when the Indian title to all the lands lying between the State of Missouri and the Missouri River shall be extinguished, the jurisdiction over said lands shall be hereby ceded to the State of Missouri, and the western boundary of said State shall be then extended *to* the Missouri River, reserving to the United States the original right of soil in said lands and of disposing of the same: *Provided*, That this act shall not take effect until the President shall, by proclamation, declare that the Indian title to said lands has been extinguished; nor shall it take effect until the State of Missouri shall have assented to the provisions of this act." 5 *Stat.* 34.

It is alleged in the bill that Congress intended by the act of 1836 to meet the wishes of Missouri as expressed in its memorial; that after the passage of that act the President, by proclamation, declared that the Indian title to the lands covered by that act had been extinguished; and that Missouri duly assented to its provisions.

By an act of Congress approved February 9th 1867 Nebraska was admitted into the Union, with the following boundary: "Commencing at a

point formed by the intersection of the western boundary of the State of Missouri with the fortieth degree north latitude; extending thence due west along said fortieth degree north latitude to a point formed by its intersection with the twenty-fifth degree of longitude west from Washington; thence north along said twenty-fifth degree of longitude to a point formed by its intersection with the forty-first of north latitude; thence west along said forty-first degree of north latitude to a point formed by its intersection with the twenty-seventh degree of longitude west from Washington; thence north along said twenty-seventh degree of west longitude to a point formed by its intersection with the forty-third north latitude; thence east along said forty-third degree north latitude to the Reya Paha River; thence down the middle of the channel of said river, with its meanderings, to its junction with the Niobrara River; thence down the middle of the channel of said river, following the meanderings thereof, to its junction with the Missouri; thence down *the middle of the channel* of said Missouri River, and following the meanderings thereof to the place of beginning." 14 *Stat.* 391; 13 *Stat.* 47.

It is undisputed in the case that *prior* to July 5th 1867 the bed and channel of the Missouri River were substantially as they had been continuously from the date of the admission of the respective States into the Union, only such variations occurring during that entire period as naturally followed in the course of time from one side of the river to the other. But on the day just named, July 5th 1867, (which was after the admission of Nebraska into the Union,) within twenty-four hours and during a time of very high water, the river, which had for years passed around what is called McKissick's Island, cut a new channel across and through the narrow neck of land at the west end of Island Precinct, (of which McKissick's Island formed a part,) about a half mile wide, making for itself a new channel and passing through what was admittedly, at that time, territory of Nebraska. After that change the river ceased to run around McKissick's Island. In the course of a few years, after the new channel was thus made, the old channel dried up and became tillable land, valuable for agricultural purposes, whereby the old bed of the river was vacated about fifteen miles in length. This change in the bed or channel of the river became fixed and permanent; for, at the commencement of this suit it was the same as it was immediately after the change that occurred on the 5th day of July 1867. The result was that the land between the channel of the river as it was prior to July 5th 1867 and the channel as it was after that date and is now, was thrown on the east side of the Missouri River; whereas, prior to that date it had been on the west side.

The fundamental question in the case is, whether the sudden and permanent change in the course and channel of the river occurring on the 5th

day of July 1867 worked a change in the boundary line between the two States.

The former decisions of this court relating to boundary lines between States seems to make this case easy of solution.

In *New Orleans* v. *United States*, 10 *Pet.* 660, 717, argued elaborately by eminent lawyers, Mr. Webster among the number, this court said: "The question is well settled at common law, that the person whose land is bounded by a stream of water, which changes its course gradually by alluvial formations, shall still hold by the same boundary, including the accumulated soil. No other rule can be applied on just principles. Every proprietor whose land is thus bounded is subject to loss, by the same means which may add to his territory; and as he is without remedy for his loss, in this way, he cannot be held accountable for his gain." It was added—what is pertinent to the present case—that "this rule is no less just when applied to public, than to private rights." The subject was under consideration in *Missouri* v. *Kentucky*, 11 *Wall.* 395, and *Indiana* v. *Kentucky*, 136 *U. S.* 479. But it again came under consideration in *Nebraska* v. *Iowa*, 143 *U. S.* 359, 361, 367, 370. In the latter case, the court, after referring to the rule announced in *New Orleans* v. *United States*, and citing prior cases in which that rule had been recognized, said: "It is equally well settled, that where a stream, which is a boundary, from any cause suddenly abandons its old and seeks a new bed, such change of channel works no change of boundary; and that the boundary remains as it was, in the center of the old channel, although no water may be flowing therein. This sudden and rapid change of channel is termed, in the law, avulsion. In *Gould on Waters*, sec. 159, it is said: 'But if the change is violent and visible, and arises from a known cause, such as a freshet, or a cut through which a new channel is formed, the original thread of the stream continues to mark the limits of the two estates.' 2 *Bl. Com.* 262; *Angell on Water Courses*, § 60; *Trustees of Hopkins' Academy* v. *Dickinson*, 9 *Cush.* 544; *Buttenuth* v. *St. Louis Bridge Co.*, 123 *Ill.* 535; *Hagan* v. *Campbell*, 8 *Porter* (*Ala.*) 9; *Murry* v. *Sermon*, 1 *Hawks* (*N. C.*) 56. These propositions, which are universally recognized as correct where the boundaries of private property touch on streams, are in like manner recognized where the boundaries between States or nations are, by prescription or treaty, found in running water. Accretion, no matter to which side it adds ground, leaves the boundary still the center of the channel. Avulsion has no effect on boundary, but leaves it in the center of the old channel." Again, in the same case, the court, referring to the very full examination of the authorities to be found in one of the opinions of Attorney General Cushing, (8 *Op. Atty. Gen'l* 175,) said: "The result of these authorities puts it beyond doubt that accretion on an ordinary river would leave the boundary between two States the varying center of the channel, and that avulsion would estab-

lish a fixed boundary, to wit, the center of the abandoned channel. It is contended, however, that the doctrine of accretion has no application to the Missouri River, on account of the rapid and great changes constantly going on in respect to its banks; but the contrary has already been decided by this court in *Jeffries* v. *Land Company*, 134 *U. S.* 178, 189." In *Nebraska* v. *Iowa*, it appeared that the Missouri River near the land there in dispute had pursued a course in the nature of an ox-bow, but it suddenly cut through the neck of the bow and made for itself a new channel. The court said: "This does not come within the law of accretion, but that of avulsion. By this selection of a new channel the boundary was not changed, and it remained as it was prior to the avulsion, the center line of the old channel; and that, unless the waters of the river returned to their former bed, became a fixed and unvarying boundary, no matter what might be the changes of the river in its new channel."

Manifestly, these observations cover the present case and make it clear that the boundary line between Missouri and Nebraska in the vicinity of Island Precinct cannot be taken to be the middle of the channel of the Missouri River, as it has been since the avulsion of 1867 and now is, but must be taken to be the middle of the channel of the river as it was prior to such avulsion. We cannot see that there are any facts or circumstances that withdraw the present case from the rule established in former adjudications.

Counsel for Missouri contend that the act admitting Missouri into the Union, the memorial sent by the Legislature of that State to Congress in 1831, and the act of June 7, 1836, with the proclamation of the President as to the extinguishment of Indian titles to lands between Missouri, as originally bounded, and the Missouri River, show that Congress intended that, so far as the boundary of the State of Missouri was concerned, the middle of the channel of the Missouri River, wherever it may be at any particular time—and regardless of any changes, however caused or however extended, or permanent, suddenly occurring in its course or channel—was to be taken as a perpetual, natural monument fixing the boundary line. We cannot accept this view. We perceive no reason to believe that Congress intended, either by the acts of 1820 and 1836 relating to Missouri or the act admitting Nebraska into the Union, to alter the recognized rules of law which fix the rights of parties where a river changes its course by gradual, insensible accretions, or the rules that obtain in cases where, by what is called avulsion, the course of a river is materially and permanently changed. Missouri does not dispute the fact that when Nebraska was admitted into the Union the body of land described in the present record as Island Precinct was in Nebraska. It is equally clear that those lands did not cease to be within the limits of Nebraska by reason of the avulsion of July 5th 1867.

For the reasons stated we adjudge, in respect of the matters involved in this suit, that the middle of the channel of the Missouri River, according to its course as it was prior to the avulsion of July 5th 1867, is the true boundary line between Missouri and Nebraska. Accordingly, the original bill must be dismissed, and a decree entered in favor of the State of Nebraska on its cross bill.

It appears from the record that about the year 1895 the county surveyors of Nemaha County, Nebraska, and Atchison County, Missouri, made surveys of the abandoned bed of the Missouri River, in the locality here in question, ascertained the location of the original banks of the river on either side, and to some extent marked the middle of the old channel. If the two States agree upon these surveys and locations as correctly marking the original banks of the river and the middle of the old channel, the court will, by decree, give effect to that agreement; or, if either State desires a new survey the court will order one to be made and cause monuments to be placed so as to permanently mark the boundary line between the two States. The disposition of the case by final decree is postponed for forty days, in order that the court may be advised as to the wishes of the parties in respect of these details.

True copy.

Test:

Clerk Supreme Court, U. S.